COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 1 0 1 1

GENE SAN SOUCIE, Individually and as President of the INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA and as PRESIDENT OF INDIANA LOCAL NO. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, THE INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and LOCAL NO. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioners,

against

The Honorable F. DICKINSON LETTS, Judge of the United States District Court for the District of Columbia,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No.

GENE SAN SOUCIE, Individually and as President of the INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA and as PRESIDENT OF INDIANA LOCAL NO. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, THE INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and LOCAL NO. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioners,

against

The Honorable F. DICKINSON LETTS, Judge of the United States District Court for the District of Columbia,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

The petitioners pray that a writ of certiorari issue to review the order of the United States Court of Appeals for the District of Columbia Circuit entered in the above case on April 20, 1959.

Opinions Below.

There were no opinions rendered by the Court below.

Jurisdiction.

The order of the Court of Appeals for the District of Columbia Circuit was made and entered on April 20, 1959 and a copy thereof is annexed to this petition as Appendix A. The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 2101 (c).

Question Presented.

The question presented is whether the respondent, under the guise of modifying a consent order authorizing such an election, may make a new order prohibiting indefinitely a free and democratic election of officers of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as Teamsters).

The petitioners comprise over 30,000 members of the Teamsters. The total membership is approximately 1,600,000.

Constitutional Provision Involved.

The constitutional provision involved is that portion of Amendment 5 of the Constitution of the United States providing that no person shall "be deprived of life, liberty or property without due process of law; . . .". A copy of Amendment 5 is annexed hereto as Appendix B.

Statement.

The present proceedings grow out of the complaint in *Cunningham* v. *English*, bearing Civil Action No. 2361-1957, a class action brought in the United States District Court for the District of Columbia by thirteen members of the Teamsters, in which it was contended that the election of officers held in October, 1957, was "rigged". A copy of the complaint is annexed hereto as Appendix C. A copy of the answer denying the essential allegations of the complaint is annexed hereto as Appendix D.

At the conclusion of the plaintiffs' case a consent order dated January 31, 1958, a copy of which is annexed hereto as Appendix E, was entered into whereby the newly elected officers assumed office only provisionally until a new election was held. The parties consented to the appointment of a Board of three Monitors, one nominated by the plaintiffs, one by the Teamsters, and the third jointly by both, which would counsel with them. At the expiration of one year from its date, the consent order (Section 8) authorized the General Executive Board of the Teamsters to call a new convention for the holding of a new election of officers, as follows:

> "A new convention and election of officers shall be held at any time after the expiration of one year from the date of this order when the General Executive Board by majority vote shall resolve to call such convention and hold such election."

After the election the Board of Monitors was to be dissolved (Consent order, Section 8).

Full assurance in every way of the fairness of the new election and of the avoidance of retaliation for the votes cast was provided by the inclusion in the consent order (Section 9) of such guaranties of the democratic process as the choice of delegates in strict accord with the Teamsters' constitution (which provides for the election of

delegates by vote of the membership); the secret ballot; supervision of the Honest Ballot Association; and the approval of the credentials of delegates with the counsel and recommendations of the Monitors.

On September 17, 1958, soon after they learned of the Teamsters' plans to hold the new convention in February, 1959, a majority of the Monitors, facing termination of their lucrative posts (the Board of Monitors has billed for services and expenses from February, 1958 to June 19, 1959 the sum of $210,166.54), petitioned the respondent to enjoin the election.[1]

The respondent obliged by issuing his Memorandum Opinion of December 11, 1958 a copy of which is annexed hereto as Appendix F, concurring with the views of the two Monitors, and on February 9, 1959, made his "Order of the Court Construing and Modifying Consent Decree", a copy of which is annexed hereto as Appendix G, which cancelled the authorization for a new election and substituted the following provision (section 3) that there be no new convention and election until recommended by the Monitors with the approval of the Court:

> "3. Ordered, that Section 8 of the Consent Decree is modified and that the first two sentences of the second paragraph [authorizing a new election after one year] are deleted therefrom and the following provision is inserted in their place:
>
> " 'The time for the next convention shall be subject to recommendation by the Board of Monitors to the General Executive Board of the International Brotherhood, with the exact time of holding the

[1] Even after the United States Court of Appeals for the District of Columbia Circuit held (Appeal No. 14983, *infra*, p. 5), that representation by Monitor Godfrey P. Schmidt's law firm of employers in Teamster negotiations creates a conflict of interest, this Monitor seeks by letter to the respondent dated June 26, 1959, and released to *The New York Times* of June 29, 1959, to withdraw as a Monitor in favor of Lawrence T. Smith, his law partner.

convention being subject to the final approval of the Court.' ''

Thus, under the guise of modification of the consent order, the respondent framed a radically different decree prohibiting the new election and maintaining the power of the provisional officers and Monitors indefinitely.

On April 10, 1959 the petitioners instituted the above entitled proceeding in the United States Court of Appeals for the District of Columbia Circuit for leave to file a petition for a writ of prohibition commanding the respondent to refrain from interfering with the right of the petitioners and all those similarly situated to hold a democratic election of officers in accordance with the consent order. The petitioners invoked the jurisdiction of the Court of Appeals to issue such a writ of prohibition pursuant to Title 28 of the United States Code, Section 1651, subsection (a), and under the inherent powers possessed by it to issue a writ of prohibition in aid of its appellate functions. The respondent, by his attorney, the United States Attorney, opposed the petition. On April 20, 1959 the petitioners served their reply to the respondent's opposition and on the very same day the Court of Appeals denied leave to file the petition for a writ of prohibition. A copy of the petition for a writ of prohibition is annexed hereto as Appendix H. There are also annexed hereto copies of the respondent's opposition and of petitioners' reply, designated respectively as Appendix I and Appendix J.

The respondent's opposition to the petition for a writ of prohibition (Appendix I) seemed largely based upon the fact that an appeal (No. 14983) was then pending in the Court of Appeals for the District of Columbia Circuit in *Cunningham* v. *English, supra,* p. 3, from respondent's modification order (Appendix G), especially insofar as it provides for enlargement of the powers of the Monitors to

engage in "housecleaning" of the Teamsters through the issuance of "Orders of Recommendation". The appeal appeared only casually concerned with the delay in a new, democratic election during which the appellants continue to hold office "provisionally". The appeal has since been decided (June 10, 1959) and in its lengthy opinion the Circuit Court evaded the matter of the District Court's shocking denial to the Teamster membership of the right to a free and democratic election of officers with a footnote, as follows:

> "[18] We do not need, therefore, to resolve the dispute as to whether or not the consent decree, see paragraph 8, Appendix A, left the time for the calling of the new convention to await a recommendation of the Monitors. We incline to think it did not; but, even if, as defendants urge, new elections and a new convention were to be held at any time the defendants might choose after a year, the court had power in the circumstances to extend the time".

It seems hardly necessary to comment that no conceivable "circumstances" justify deprivation of the union members' right of self-government by officers chosen at an honest election.

In any event, this Court has held that possibility of appeal is not a valid objection to expeditious relief by prohibition when the District Court "assumes to take cognizance of matters over which it has no lawful jurisdiction." *Ex Parte State of New York*, 256 U. S. 490, 497, 503 (1921).

In the present case the want of authority in the respondent to place the 30,000 petitioners and the remainder of the 1,600,000 members of the Teamsters in the humiliating position of representation for an indefinite period by officials holding office under the stigma, however unproven, of an allegedly "rigged" election and to subject them indefinitely to the counsel of a Board of Monitors, is evident.

Reasons for Granting the Writ.

It is respectfully submitted that the Court of Appeals has so far sanctioned a departure from the accepted and usual course of judicial proceedings by a lower court, "as to call for an exercise of this Court's power of supervision". Rule 19, Supreme Court Rules.

The respondent's deprivation of the right of the Teamsters to a democratic election of their officers is an anomaly in the law. Upon exhaustive review of the authorities, petitioners find not a single precedent for the respondent's assumption of jurisdiction to prohibit by decree the democratic choice of their representatives by 1,600,000 union members. On the contrary, the judicial trend has been in support of free elections.

National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 34 (1937);
System Federation No. 40 v. *Virginian Ry. Co.*, 11 F. Supp. 621, aff'd 84 F. 2d 641, aff'd 300 U. S. 515 (1937);
Myers v. *Louisiana & A. Ry. Co.*, 7 F. Supp. 92, 97 (1933);
Malloy v. *Carroll*, 272 Mass. 524 (1930);
Webster v. *Rankins* (Mo. App.), 50 S. W. 2d 746 (1932);
Robinson v. *Nick*, 235 Mo. App. 461 (1940);
Harris v. *Geier*, 112 N. J. Eq. 99, 105 (1932);
Local No. 11 v. *McKee*, 114 N. J. Eq. 555 (1933);
Collins v. *International Alliance of Theatrical Stage Employees*, 119 N. J. Eq. 230, 247 (1935);
Local No. 373 v. *International Association*, 120 N. J. Eq. 220 (1936);
Canfield v. *Moreschi*, (N. Y.), 182 Misc. 195, aff'd 268 App. Div. 64, aff'd 294 N. Y. 632 (1945);
Daley v. *Stickel*, (N. Y.), 2 App. Div. 2d 287, 6 App. Div. 2d 1 (1958);
Dusing v. *Nuzzo*, (N. Y.), 177 Misc. 35, mod. 263 App. Div. 59 (1941);

Dusing v. *Nuzzo*, (N. Y.), 178 Misc. 965 (1942);
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Irwin v. *Possehl*, (N. Y.), 143 Misc. 855 (1932);
Koukly v. *Canavan*, (N. Y.), 154 Misc. 343 (1935);
Raevsky v. *Upholsterers' International Union*, 38 Pa. Dist. & Co. 187 (1940);
Ray v. *Brotherhood of Railroad Trainmen*, 182 Wash. 39 (1935);
87 C. J. S. Trade Unions, §23;
Judicial Settlement of Internal Union Disputes, by Clyde W. Summers, 7 Buffalo L. Rev. 405 (1958);
Judicial Intervention in Revolts against Labor Union Leaders, 51 Yale L. J. 1372;
Election Disputes within Trade Unions, 86 U. of Pa. L. Rev. 885.

As Professor Clyde W. Summers wrote in his report entitled, *Democracy In Labor Unions*, which was unanimously approved by the Board of Directors of the American Civil Liberties Union on April 28, 1952:

> "The right to free and honest elections has been given more clear-cut recognition and more consistent protection. In a number of cases the courts have ordered unions to hold elections when they had been repeatedly postponed, and in others the courts have inquired into the honesty of elections or voided them because they have been improperly conducted. In more extreme cases the courts have appointed receivers to take over the affairs of a union, held an election under the supervision of the court, and installed the elected officers. Judicial action can be obtained only when there is a clear showing of need, but in those cases the courts act directly to insure free and honest elections".

A most important value of union membership is the right to self-government in economic affairs. Yet, through

respondent's disregard of the usual judicial standards, the consent decree has been reframed to deprive the Teamsters of the free choice of their leaders, an achievement that the plaintiffs could not have won even if, instead of a settlement, the trial of their case (*Cunningham* v. *English*, *supra*, p. 2) had been conducted to a successful conclusion. If a consent decree may be thus converted to a new decree against the will of a party, a litigant is ill-advised to settle but must always fight his case until final judgment.

In his Memorandum Opinion (Appendix F), the respondent placed reliance upon selective quotations from Mr. Justice Cardozo's opinion in *United States* v. *Swift & Co.*, 286 U. S. 106 (1932) for his jurisdiction to "modify" the consent order. In truth, the *Swift* case constitutes compelling authority against the respondent's power under the guise of modification to frame a new decree postponing the right of election until such indefinite time as the Board of Monitors and the respondent determine.

In the *Swift* case, Swift & Co., meat packers, sought relaxation of a consent decree enjoining it from the sale of groceries in violation of the Sherman Anti-Trust Act. Although ten years had elapsed since the consent decree, with the intervening rise of chain stores dealing both in meats and groceries, this Court demonstrated its great respect for consent orders by denying the petition for relaxation of the decree, on the ground that the hardship caused by the decree was not so extreme as to constitute oppression. In holding against the petitioners, Mr. Justice Cardozo stressed that while a consent decree may be subject to modification by the Court, the Court lacks jurisdiction to frame a new decree, as was done by the respondent herein. In the words of Mr. Justice Cardozo, at page 119 of his opinion:

> "There is need to keep in mind steadily the limits of inquiry proper to the case before us. We

> are not framing a decree. We are asking ourselves whether anything has happened that will justify us now in changing a decree. The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting".

Clearly, the *Swift* case is no precedent for the respondent's unwarranted assumption of jurisdiction, "under the guise of readjusting" a decree looking toward a democratic election, "to reverse" by "framing a decree", postponing such election indefinitely. Indeed, the respondent's abrogation by decree of the right of the union membership to the election of officers at a free and democratic election constitutes a patent deprivation of due process of law.

Respondent's extraordinary, unprecedented assumption of jurisdiction in conflict with well established authorities (*supra*, pp. 7, 8) to bar indefinitely 1,600,000 people from holding a free election of their officers, "the ultimate and most important freedom in the democratic conduct and control of the group" (American Civil Liberties Union's *Labor Union "Bill of Rights"*, adopted on March 21, 1958), is so clearly and indisputably a gross departure from the accepted and usual course of judicial proceedings and the sanction of such departure by the Court of Appeals, whose order, without opinion, would not permit the filing of the petition for prohibition, is so apparent as to seem "to call for an exercise of this court's power of supervision".

Conclusion.

For the reasons set forth above, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

William Goffen,
Counsel for Petitioners.

Appendix A.

Order.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM 1958

No. 15,076

GENE SAN SOUCIE, individually and as President of the Indiana Conference of Teamsters of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, etc.,

Petitioner,

v.

THE HONORABLE F. DICKINSON LETTS, Judge of the United States District Court for the District of Columbia,

Respondent.

Before: EDGERTON, WILBUR K. MILLER, and FAHY, Circuit Judges, in Chambers.

Upon consideration of the petition of Gene San Soucie, *et al.*, for leave to file a petition for writ of prohibition and of respondent's opposition, it is

ORDERED by the court that the petition for leave to file a petition for writ of prohibition is denied.

Per Curiam.

Dated: April 20, 1959.

Appendix B.

Constitution of the United States, Amendment 5

No person shall be held to answer for a capital, o
otherwise infamous crime, unless on a presentment
indictment of a Grand Jury, except in cases arising
the land or naval forces, or in the Militia, when in actu
service in time of War or public danger; nor shall a
person be subject for the same offense to be twice put
jeopardy of life or limb, nor shall he be compelled
any criminal case to be a witness against himself, nor
deprived of life, liberty, or property, without due proce
of law; nor shall private property be taken for public us
without just compensation.

Appendix C.

Amended Complaint.

UNITED STATES DISTRICT COURT,

FOR THE DISTRICT OF COLUMBIA.

JOHN CUNNINGHAM, THOMAS C. MANNING, FRANK KENNEDY, ANDREW BOGGIA, GEORGE BECKER, JOSEPH MOLLOY, JOHN MCMANUS, HAROLD WILL, STEVE MILONE, JOHN MCGLYNN, EDWARD MCFARLAND, JOHN OLSEN and HOBART GALE,

Plaintiffs,

against

JOHN F. ENGLISH, individually and as General Secretary-Treasurer of INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, DAVE BECK, DANIEL J. MURPHY, JOHN J. CONLIN, SIDNEY L. BRENNAN, JOHN T. O'BRIEN, FRANK BREWSTER, WILLIAM A. LEE, JOSEPH DIVINY, JAMES R. HOFFA, EINAR MOHN, HARRY TEVIS and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Defendants.

Civil Action # 2361-1957

This complaint alleges class actions (a) in conspiracy among union officers and their agents to deprive members of rights and property under the Union Constitution and

(b) in contract for violation of Union Constitution by officers and their agents; it prays for relief enjoining defendants and their agents from further violation of the Union Constitution and it seeks appointment of a master in equity to conduct fair union elections as the Union Constitution requires.

Plaintiffs, complaining of defendants herein by Dodd, Kaplan & Schmidt, their attorneys, allege:

FOR A FIRST SEPARATE AND DISTINCT CLAIM OR CAUSE OF ACTION.

1. This Court has jurisdiction over this claim or cause of action under Section 1332 of Title 28 of the United States Code entitled "Judiciary and Judicial Procedure" and under Section 301 (c), (d) and (e), Title III of the National Labor Relations Act, as amended, and under Rule 17(b) of the Federal Rules of Civil Procedure.

2. All plaintiffs herein reside in and are citizens of the State of New York.

3. The General (or principal) Office and principal place of business of defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is 25 Louisiana Avenue, N. W., Washington 1, D. C.; and all of defendants have offices at that address and carry on their business at that address regularly or from time to time to a significant and substantial extent; and defendants and agents of defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter called International Organization) are engaged in representing and acting for employee members of the International Organization within the District of Columbia.

4. All the personal defendants herein reside in and are citizens of States other than the State of New York or they reside in the District of Columbia and are citizens of the United States.

5. The matter in controversy, as hereinafter explained, far exceeds the sum or value of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs.

6. Plaintiff, John Cunningham, resides in the County of Queens, City and State of New York, and is a citizen of that State. He is a member in good standing of *Milk Wagon Drivers and Delivery Employees Local 584*, which is a local union and "subordinate body" of defendant, International Organization.

7. Plaintiff, Thomas C. Manning, resides in the County of The Bronx, City and State of New York, and is a citizen of that State. He is a member in good standing of the aforesaid *Local 584*.

8. Plaintiff, Frank Kennedy, resides in the County of The Bronx, City and State of New York, and is a citizen of that State. He is a member in good standing of the aforesaid *Local 584*.

9. Plaintiff, Andrew Boggia, resides in the County of Queens, City and State of New York, and is a citizen of that State. He is a member in good standing of *Building Material Teamsters Local 282*, which is a local union and "subordinate body" of the International Organization.

10. Plaintiff, George Becker, resides in the County of Kings, City and State of New York, and is a citizen of that State. He is a member in good standing of the aforesaid *Local 282*.

11. Plaintiff, John McGlynn, resides in the County of Kings, City and State of New York, and is a citizen of that State. He is a member in good standing of the aforesaid *Local 282*.

12. Plaintiff, Edward McFarland, resides in the County of Queens, City and State of New York, and is a citizen of that State. He is a member in good standing of the aforesaid *Local 282*.

Appendix C.

13. Plaintiff, Joseph Molloy, resides in the County of The Bronx, City and State of New York, and is a citizen of that State. He is a member in good standing of *Express Drivers, Chauffeurs and Helpers Local 808*, which is a local union and "subordinate body" of defendant, International Organization.

14. Plaintiff, John McManus, resides in the County of Queens, City and State of New York and is a citizen of that State. He is a member in good standing of the aforesaid *Local 808*.

15. Plaintiff, Harold Will, resides in the County of Queens, City and State of New York and is a citizen of that State. He is a member in good standing of the aforesaid *Local 808*.

16. Plaintiff, Steve Milone, resides in the County of New York, City and State of New York, and is a citizen of that State. He is a member in good standing of the aforesaid *Local 808*.

17. Plaintiff, John Olsen, resides in the County of Kings, City and State of New York, and is a citizen of that State. He is a member in good standing of *Merchandise Drivers Local 641*, which is a local union and "subordinate body" of defendant, International Organization.

18. Plaintiff, Hobart Gale, resides in the County of Sullivan, State of New York, and is a citizen of that State. He is a member in good standing of *Dairy Transportation Drivers, Helpers and Teamsters Employees, Northern New York and Surrounding Areas, Local 770*, which is a local union and "subordinate body" of defendant, International Organization.

19. Plaintiffs bring this action for themselves and for all other members (so numerous as to make it impracticable to bring them all before the Court) of the International Organization and its "subordinate bodies" similarly situated; and there are common questions of law and of fact

affecting their several rights; and a common relief is sought herein; and the object of the action is the adjudication of claims which do or may affect specific property as hereinafter specified also involved in this action; and this class action is authorized by Rule 23 of the Federal Rules of Civil Procedure.

20. Defendant, International Organization, is an unincorporated association and a labor union within the meaning of state and federal laws. It comprises 891 local unions and many other "subordinate bodies" including Conferences and Joint Councils throughout the United States and Canada, all with a membership in excess of 1,500,000 workers.

21. At all of the times hereinafter mentioned, defendant, Dave Beck, was and still is General President and a member of the General Executive Board of the International Organization. He resides in the State of Washington and is a citizen of that State.

22. At all of the times hereinafter mentioned, defendant, John F. English, was and still is General Secretary-Treasurer and a member of the General Executive Board of the International Organization. He resides in the District of Columbia and is a citizen of the United States.

23. At all of the times hereinafter mentioned, defendant, Daniel J. Murphy, was and still is First Vice-President and a member of the General Executive Board of the International Organization. He resides in and is a citizen of the State of Missouri.

24. At all of the times hereinafter mentioned, defendant, John J. Conlin, was and still is Second Vice-President of the International Organization and a member of the General Executive Board thereof. He resides in and is a citizen of the State of New Jersey.

25. At all of the times hereinafter mentioned, defendant, Sidney L. Brennan, was and still is Third Vice-President

of the International Organization and a member of the General Executive Board thereof. He resides in and is a citizen of the State of Minnesota.

26. At all of the times hereinafter mentioned, defendant, John T. O'Brien, was and still is Fourth Vice-President of the International Organization and a member of its General Executive Board. He resides in and is a citizen of the State of Illinois.

27. At all of the times hereinafter mentioned, defendant, Frank Brewster, was and still is Fifth Vice-President of the International Organization and a member of its General Executive Board. He resides in and is a citizen of the State of Washington.

28. At all of the times hereinafter mentioned, defendant, William A. Lee, was and still is Seventh Vice-President of the International Organization and a member of its General Executive Board. He resides in and is a citizen of the State of Illinois.

29. At all of the times hereinafter mentioned, defendant, Joseph Diviny was and still is the Eighth Vice-President of the International Organization and a member of its General Executive Board. He resides in and is a citizen of the State of California.

30. At all of the times hereinafter mentioned, defendant, James R. Hoffa, was and still is a Ninth Vice-President of the International Organization and a member of its General Executive Board. He resides in and is a citizen of the State of Michigan.

31. At all of the times hereinafter mentioned, defendant, Einar Mohn, was and still is Tenth Vice-President of the International Organization and a member of its General Executive Board. He resides in the District of Columbia and is a citizen of the United States.

32. At all of the times hereinafter mentioned, defendant, Harry Tevis, was and still is Eleventh Vice-President of

the International Organization and a member of its General Executive Board. He resides in and is a citizen of the State of Pennsylvania.

33. At all of the times hereinafter mentioned, one Thomas J. Hickey was and still is Sixth Vice-President of the International Organization and a member of its General Executive Board.

34. At all of the times hereinafter mentioned, defendant, International Organization, had, and purports to act under, a Constitution which, in law, constitutes a contract obligating the members and officers, the joint councils and local unions thereof, as well as plaintiffs and defendants in this action. A copy of said Constitution is hereto annexed and marked *Exhibit A* to form part of this complaint. Under said Constitution, plaintiffs and all other members of the International Organization are granted certain rights, among which is the right (which cannot be exercised because of the conduct of defendants as hereinafter alleged) to a remedy for the intolerable situation and lawless or irresponsible conduct hereinafter described; and said Constitution imposes certain duties upon defendants with respect to their administration of the business and affairs of the International Organization; which duties defendants, as hereinafter appears, repudiated or failed to perform.

35. Defendant, International Organization, and its members are parties to the AFL-CIO Constitution, which also constitutes, in law, a contract obligation upon defendants and a source of rights (violated, as hereinafter appears) of plaintiffs; but such rights are unimplemented with effective procedures or remedies for their enforcement. A copy of said AFL-CIO Constitution is hereto annexed, marked Exhibit B, to form part of this complaint.

36. Purporting to act as members of the General Executive Board of the International Organization, defendants have fixed Miami, Florida, as the place and the period from September 29th to October 5th, 1957, as the time for

a National Convention of the International Organization over which defendant Beck will preside; and purporting to act under the Constitution of the International Organization, defendants have arranged that at said National Convention an election of officers of the International Organization, including the General President of said International Organization, shall take place.

37. With respect to the election of delegates and alternates to said Convention, the Constitution of the International Organization, Section 5 thereof, provides in part as follows:

> "All delegates to the international convention shall be selected by vote at a regular meeting of the local union, or such delegates may be appointed by the Executive Board of the local union if so authorized by a vote of the local union membership at a regular meeting. * * *"

38. According to the "Roster of Local Unions with Addresses of Secretaries" published by the International Organization during the incumbency of defendants, there are at present affiliated with said International Organization some 891 local unions.

39. To the knowledge, and with the encouragement or tolerance, of defendants, and in violation of said Constitution, more than 50% of the local unions purporting or planning to send delegates to said National Convention have failed to conduct any regular meetings or elections (a) for the purpose of selecting delegates to attend said Convention, or (b) for the purpose of authorizing their respective Executive Boards to appoint delegates to said National Convention; and more than 80% of the delegates planning to attend said National Convention have been hand-picked by or with the tolerance or connivance of defendants or of persons in concert with defendants and in violation of Article I, Section 5, of the International

Organization's Constitution (herein sometimes called the IBT Constitution) in that they have not been appointed or selected pursuant to votes of membership at regular local meetings as required by said Constitution, nor, indeed, by any vote at any meeting of the local unions involved.

40. Anticipating said Convention and election, defendants and those in concert with them have become active participants in or have, in violation of the IBT Constitution, furthered or tolerated a common effort or conspiracy to rig or improperly influence the said Convention election and to prearrange its outcome by fraud, deception or strategem, as well as by intimidation, coercion or threats and by other irregularity as hereinafter set forth; for the ultimate purpose of controlling or influencing the International Organization for their own selfish, unconstitutional, illegal objectives; for the purpose (among others) of electing defendant, James R. Hoffa, as General President of the International Organization; for the further purpose (among others) of electing defendant, Dave Beck, as General President Emeritus, with lifetime tenure and with salary equal to the salary presently paid to him; and for the purpose of controlling for their own ends the International Organization's vast treasury.

41. As part of the aforesaid conspiracy or common effort, defendants, or some of them, and those in concert with them, in violation of the IBT Constitution, have, for their own selfish purposes and to perpetuate and increase their own power, controlled the selection of delegates to said Convention by divers means, as hereinafter described; and, in part, defendants have executed their plan by instituting trusteeship proceedings against locals intractable to their designs which they disfranchised because said locals could not be controlled by defendants for their own purposes or by unduly instituting or continuing trusteeships with respect to unions which defendants could not control or influence to their purposes—all in violation of the IBT Constitution.

42. Defendants, or most of them, and those in concert with them have perpetuated themselves in office over long periods of time by their control over delegates to national conventions in violation of the IBT Constitution; and they propose by their said conspiracy or common effort further to perpetuate themselves in office by rigging the election at the aforesaid Convention.

43. Defendants and those in concert with them have planned and perpetrated or have tolerated, within the International Organization and within its "subordinate bodies", many and serious violations of law and of the IBT Constitution and many flagrant irregularities which are also violations of the AFL-CIO Constitution and of the AFL-CIO Codes of Ethical Practices, to wit:

(1) By reason of the misfeasance, malfeasance and nonfeasance of defendants and those in concert with them, the membership of hundreds of locals and "subordinate bodies" affiliated with the International Organization have not enjoyed democratic procedures or industrial democracy such as the IBT Constitution and the AFL-CIO Constitution require. Instead, they were submitted to the domination of dictatorial leaders, who, with the encouragement, connivance or permission of defendants, imposed themselves on local union membership, or imposed leaders whose only or chief purpose was money or power or both; many of whom are gangsters, racketeers, extortionists and persons of other ill repute, who permit no regular or free elections within the said locals; who control the funds of said locals without accountings and without even the rudiments of any honest bookkeeping system; and who otherwise flagrantly violated the IBT Constitution as well as sound trade union practices.

(2) By reason of the misfeasance, malfeasance and nonfeasance of defendants and those in concert with them, trusteeships, whether originally instituted properly or not, were established or continued for the purpose of controlling

the locals and funds under trusteeship and of dominating the delegates who would attend international conventions from such locals with the result and intention of disfranchising the members of more than one hundred locals. Moreover, defendants or those in concert with them select delegates from or for trusteed local unions and permit them to vote at national conventions in violation of the IBT Constitution, having selected them to perpetuate their own office and power. For example, defendant Hoffa today controls many local unions and some 45,000 members of the International Organization by such trusteeships; and all such members are thus, in violation of the IBT Constitution, effectively disfranchised and submitted to the will of Hoffa and defendants.

(3) By reason of the misfeasance, malfeasance and nonfeasance of defendants and those in concert with them, officers of many local unions and defendants have frequently and notoriously associated and consorted with gangsters, racketeers, extortioners and persons of other ill repute to whom defendants yielded or sold charters and who brought upon said locals and the International Organization public odium. Thus, defendants and other union officers in concert with them failed to represent in proper fashion the members of said International Organization whose dues and assessments made possible the functioning of said Organization and the payment of large salaries and expenses (often not accounted for) to defendants.

(4) By reason of the misfeasance, malfeasance and nonfeasance of defendants and those in concert with them, defendants failed or refused to revoke the membership of officers and members of local unions and of the International Organization and of its "subordinate bodies" when such officers and members were found guilty of crime; all in flagrant violation of Section 13, Article XVIII of the International Organization's Constitution.

(5) By misfeasance, malfeasance or nonfeasance, defendants failed or refused to enforce and apply in good faith the objects of the IBT Constitution.

(6) By misfeasance, malfeasance or nonfeasance, defendants failed or refused to enforce or comply with Section 4, Article II of said IBT Constitution with respect to the eligibility of candidates for office.

(7) By misfeasance, malfeasance or nonfeasance, defendants and those in concert with them failed or refused to respect the jurisdiction of legitimate local unions affiliated with the International Organization in order to consolidate their own power or to play favorites with those who aided or abetted defendants in their unconstitutional plans or wishes.

(8) By misfeasance, malfeasance or nonfeasance, defendants failed or refused to act on charges, petitions and complaints presented to them pursuant to the IBT Constitution even where such formal documents called attention to widespread and serious violation of the IBT Constitution by members, officers, joint councils and local unions affiliated with the International Organization.

(9) By reason of the misfeasance, malfeasance and nonfeasance of defendants and those in concert with them, defendant, Dave Beck, as part of the aforesaid common effort or conspiracy, failed or refused to exercise his administrative and judicial powers honestly and in good faith to prevent or to remedy violations of the IBT Constitution even when such violations deprived members and "subordinate bodies" affiliated with the International Organization of important rights under said Constitution or under law.

(10) By misfeasance, malfeasance or nonfeasance, defendants failed or refused, as did those in concert with them, to conduct just and honest trials or to process charges against members, locals, joint councils and officers pursuant

to Section 6 of Article XVIII of the International Organization's Constitution; thus consolidating defendants' power over irresponsible officers spared in this way from trial.

(11) By misfeasance, malfeasance or nonfeasance, defendants and those in concert with them organized or participated in the organization or permitted the organization, in violation of the IBT Constitution and of the rights of members and "subordinate bodies", of certain fraudulent locals for the purpose of rigging the election conducted by Joint Council 16 on February 14th, 1956, and for the purpose of consolidating defendants' power and of depriving members and "subordinate bodies" of their rights to honest elections and to representation of their own choice—said fraudulent locals being locals numbered 258, 269, 284, 295, 362, 651 and 275.

(12) By misfeasance, malfeasance or nonfeasance, defendants and those in league with them planned and prearranged or tolerated the prearrangement of the election of defendant, James R. Hoffa, as General President and the election of defendant, Dave Beck, as General President Emeritus, said concert having been planned and determined in part at least in secret conclave attended by all or most of defendants and persons in concert with them within the last two months.

(13) By misfeasance, malfeasance or nonfeasance, defendants and those in concert with them have approved or permitted dictatorial officers of local unions affiliated with the International Organization; officers convicted of serious crime involving their stewardship as such officers (for example, the case of Local 445 and its two principal officers, Stickles and Massiello, who had been convicted and sentenced to Leavenworth for a term of five years for conspiracy to extort $64,000 from eight employers); officers who refuse to permit elections; officers who raid union treasuries; officers who refuse memberships financial accountings; officers who keep no or inadequate financial

records; officers who, acting with divided loyalties, engage in private business ventures with union funds; officers who withdraw from union treasuries large expense items without vouchers; and officers who otherwise violate the IBT Constitution and the AFL-CIO Constitution in serious matters.

(14) By misfeasance, malfeasance or nonfeasance, defendants, particularly defendants Beck, Hoffa, Brennan and Brewster, have themselves used union funds in violation of law, common honesty, the IBT Constitution and the AFL-CIO Constitution for their own private gain and used their position as union officials for selfish purposes, all to consolidate their own power and influence.

(15) By misfeasance, malfeasance or nonfeasance, defendants and those in concert with them visited reprisals upon members or officers of "subordinate bodies" when such members or officers stood in the way of purposes or plans of defendants or those in concert with them.

(16) To consolidate their power and influence, defendants or some of them with the connivance of others made compacts or deals with racketeers and racketeer-controlled unions or non-existent or conveniently contrived organizations labelled "unions" to the detriment of the membership of the International Organization and in violation of the purposes and provisions of its Constitution.

(17) By misfeasance, malfeasance or nonfeasance, defendants or some of them or those in concert with them concluded "sweetheart" contracts with favorite employers or they tolerated or connived at corrupt arrangements with employers or they refused to apply, impartially and honestly, labor union contracts, objectives and methods to business operations conducted by defendants or by some of them or by their friends because their own personal gain or the gain of members of their families or friends closely associated with them were involved.

(18) Defendants or some of them with the connivance of the others, in violation of the International Organization's Constitution, and for the consolidation of their own power or influence, concluded back-door agreements with labor union of ill-repute such as the ILA and the United Automobile Workers, AFL.

(19) In violation of the IBT Constitution, defendants or some of them with the connivance of the others used or permitted tactics of threats, coercion and other lawlessness for the accomplishment of the purposes of defendants and of those in concert with them.

(20) Because of the misfeasance, malfeasance and nonfeasance of defendants, there were frequent borrowings of substantial sums of money from employers or from persons representing employers or identified in interest with employers in cases where these very employers are required to or do bargain collectively with the same union officials (including defendants, especially Hoffa, Beck, Brewster and Brennan) who borrow the money.

(21) In case where the International Organization or its "subordinate bodies" sponsored or promoted real estate developments allegedly for the benefit of rank-and-file membership or for some other alleged union purpose, there were, because of defendants' misfeasance, malfeasance or nonfeasance, frequent and substantial borrowings of money by union officials (including defendants, especially Hoffa, Brewster, Beck and Brennan) from real estate promoters or agents as to whom the said union-official borrowers are, in effect, principals.

(22) Defendants and officials in concert with them used their official position and the fact that large sums of union monies were on deposit with particular banks for the purpose of influencing those banks to lend money to friends of defendants or to union leaders or to persons in concert with them or for some other selfish purpose which violates the IBT Constitution and the AFL-CIO Constitution.

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(23) Acquisition by union officials (including defendants, especially Hoffa, Beck, Brewster and Brennan) by means of union funds or on the basis of union position or options to buy real or personal property or interest in developments or ventures, the success of which depended upon purchases by rank-and-file members or by persons subject to the control and domination of those thus acquiring the option.

(24) Acceptance of kick-backs, disguised as loans or in other ways, from accountants, auditors and others doing business with unions who derive income from the International Organization or its "subordinate bodies", where the discretion to pay or finance such income out of union funds rests with the very union officials receiving such kick-backs, all of which occurred because of defendants' misfeasance, malfeasance or nonfeasance.

(25) Substantial personal borrowings of money by union officials (including defendants, especially Hoffa, Beck, Brewster and Brennan) from accountants, auditors and others doing business with "subordinate bodies" where the union officials who borrow such monies control the hiring or tenure of such accountants, auditors or others, as a result of defendants' misfeasance, malfeasance or nonfeasance.

(26) Borrowing of union monies from union treasuries by union officials (including defendants, especially Hoffa, Beck, Brewster and Brennan) without security, without interest and without the knowledge of the membership, but with the encouragement, participation, or toleration of the misfeasant, malfeasant or non-feasant defendants.

(27) Borrowings of substantial sums of money by union officials (including defendants, especially Hoffa, Beck, Brewster and Brennan) from business agents of the International Organization or its "subordinate bodies" where the job tenure of said business agents depend upon the good will of the borrower, with the encouragement, participation,

or toleration of the misfeasant, malfeasant, or nonfeasant defendants.

(28) The lending of substantial sums of union money by defendants or those in concert with them or those tolerated by them for race track operations or for gifts to friends or associates or for the purchase of assets from notorious gangsters or mobsters, with the result or intention of consolidating defendants' power or influence.

(29) Creation by defendants, or by those in concert with them, of corporations or other business entities or devices using in connection with them union funds "borrowed" or embezzled to finance the personal aggrandizement of those who, as officials of the International Organization or its "subordinate bodies", control such union funds.

(30) Donation of union dues money and union funds by defendants or some of them or by those in concert with them, or by union officials without protest from but with the knowledge of some or all of the defendants, to promote election campaigns within locals or "subordinate bodies" of the International Organization for the purpose of building the personal power and strength of defendants or those in concert with them and for the purpose of putting in union office persons friendly to defendants or congenial to their grab for power.

(31) The lending of monies or the donation of monies to employers or employers' groups in return for various favors from such employers or employers' groups, thus creating or indulging serious conflict of interest.

(32) Borrowings by defendants or by those in concert with them from persons, firms or corporations whose primary interests or associations are with employing truckers, with the result or intention of consolidating defendants' power or influence.

(33) Use of union funds in accordance with the unfettered discretion and pursuant to the calculated domination of defendants and those in concert with them for the purpose of assuring their own reelection and their perpetuation in power as labor union officials.

(34) Use by defendants or those in concert with them of their high union office for lending, borrowing or advancing money to defendants or to friends or associates of defendants for the consolidation of the power or influence of the misfeasant, malfeasant or nonfeasant defendants or some of them.

(35) Employment of friendly labor consultants who advise managements and participation in their fees where such employment results in "favored nation" treatment; or acquisition of other income or emoluments as a direct or indirect result of the use of such friendly labor consultants.

(36) Frequent use of dummies for the purpose of masking financial transactions involving union funds or irresponsible union stewardship in which defendants or those associated with them are interested.

(37) Use of high union office by defendants or those associated with them or use of union funds for business transactions which exemplify conflicts of interest, violation of fiduciary relationships and irresponsible stewardship of union affairs or funds.

(38) Use of union influence and power by defendants or those associated with them for the purpose of skyrocketing or parlaying small original investments into large net profits for the personal enrichment of defendants, their relatives, friends or associates.

(39) Participation by defendants and those associated with them in various business dealings characterized by conflict of interest between sound trade union objectives and the ambition of defendants and those associated with them

for power or money to the serious neglect of union interest and affairs.

(40) Use of union position, influence and power by defendants and those in concert with them with insurance companies or brokers receiving large premiums from unions under their control in order to obtain special favors for themselves or their friends from such insurance companies.

(41) Acquisition of stock interests or stock ownerships where such acquisition or the continuance of possession of such stock by defendants or those associated with them raises or implies conflicts of interest between defendants and those associated with them in their personal capacity and defendants and those associated with them as union officials.

(42) Appointment by defendants or by those associated with them of criminals to positions of authority within the International Organization or its "subordinate bodies" or the toleration of such criminals in high office without protest or challenge under the IBT Constitution for the consolidation of defendants' power or influence.

(43) Fraudulent use of the device of trusteeship under the IBT Constitution for the purpose of the aggrandizement of defendants or those associated with them and for the purpose of perpetuating them in power.

(44) The perpetration or toleration without protest of many intra-union abuses in the exercise by defendants of dictatorial and irresponsible power in violation of the IBT Constitution.

44. The sections of the IBT Constitution which have been flagrantly violated by the abuses and practices hereinabove set forth are the following:

(1) *Article I, section 2*, which defines the objects of the International Organization, objects which have been sub-

stantially nullified or obstructed by defendants or those in concert with them.

(2) *Article II, section 1,* which deals with International Organization's jurisdiction, and to which defendants and those in concert with them have paid no attention in egregious cases.

(3) *Article II, section 2,* which requires that members shall be persons of good moral character and shall be persons who are either citizens of the United States or persons who have declared their intention to become citizens. Some of the persons tolerated in power by defendants are not citizens and many of them are not persons of good moral character.

(4) *Article II, section 4,* which prescribes rules for eligibility for election to any office of a local union or of the International Organization. In instances where it served the ulterior purposes of defendants and those in concert with them, these rules of eligibility have been callously disregarded.

(5) *Article III, section 5,* which prescribes the election of delegates and alternates. Defendants have violated or tolerated the violation of this section, as aforesaid; a large number of Teamster unions are being denied their rights to send delegates to the International Organization's Convention in Miami; a larger number of delegates have not been properly elected, or appointed by properly authorized executive boards; and the basis for representation and the requisites for representation under the IBT Constitution have been disregarded.

(6) *Article III, section 6,* which prescribes the credentials entitling delegates to seating in the Convention. For the reasons hereinabove set forth, many delegates with improper or false credentials have been named as such by "subordinate bodies" and threaten, unless enjoined by this

Court, to vote upon the basis of such credentials at the national election.

(7) *Article III, section 7,* which provides for the appointment by the General President of a Committee on Credentials. Since the General President is a member of the conspiracy or common effort aforesaid, his and his appointees' administration of this section at the next Convention promises to be a mere device for the advancement of the aforesaid conspiracy or common effort.

(8) *Article IV, section 2,* concerns the election of officers and delegates and, among other things, requires that all nominations for International offices shall be made in open convention. Actually, the nominations for the forthcoming Miami Convention have already been made by defendants and others as part of the conspiracy or common effort aforesaid.

(9) *Article V, section 1,* limits the salary of the General President to $50,000 a year; but he has improperly appropriated far more than $50,000 a year in the course of his incumbency as General President.

(10) *Article V, section 2,* requires honest and reasonable disbursements for travel, a prescription which has been violated seriously by defendants and their friends.

(11) *Article VI, section 1(b),* requires that the General President shall conduct the affairs of the International Organization "in accordance with the Constitution", which he has utterly failed to do.

(12) *Article VI, section 1(c),* requires that the General President shall devote his entire time to the service of the International Brotherhood. In fact, defendant Beck has devoted substantial portions of his time to private business ventures and to dishonest and unlawful ventures, conspiracies or common efforts for his own personal aggrandizement and power or wealth or both, using for this purpose his prestige as General President.

(13) *Article VI, section 1(h),* requires referendum votes of the membership of local unions in respect to questions or situations where the vote of the membership is required under the Constitution or under the Constitution and By-Laws of the local union involved. Actually, defendant Beck, as General President, and the other defendants have failed to discharge this duty or have tolerated the dishonest and fraudulent discharge of this duty where it served their purposes to do so.

(14) *Article VI, section 2,* vests certain judicial powers in the General President. In fact, defendant Beck, as General President, has dishonestly and discriminatorily discharged these powers in important respects for the purpose of perpetuating himself and those in concert with him in power; and he has been guilty of serious misfeasance, malfeasance and nonfeasance with respect to such judicial powers.

(15) *Article VI, section 4,* requires the General President to determine whether existing strikes are subject to strike benefits as provided by the Constitution. The General President has used this power only for the purpose of strengthening those in concert with him and those who have aided him in the conspiracy or common effort aforesaid and to badger, harass or discourage those who were unsympathetic with his objectives of perpetuation in power and personal self-aggrandizement.

(16) *Article VI, section 6,* defines the power of the General President to appoint trustees and imposes the duties and obligations of locals under trusteeship; whereas the General President and the other defendants, in violation of this section of the Constitution, have used trusteeships to disfranchise members and "subordinate bodies" and to perpetuate themselves and those in concert with them in power and for the purposes of their own aggrandizement in wealth or power.

(17) *Article VII, section 3,* concerns the issuance of charters and the charter contract. Defendants have made or tolerated use of charters in violation of the IBT Constitution for the purposes of advancing the conspiracy or common effort aforesaid.

(18) *Article VII, section 4,* concerns financial reports. Defendants have participated in the preparation of dishonest reports or have tolerated the issuance of dishonest reports and in violation of their duties as officials of the International Organization.

(19) *Article VII, section 6,* concerns the finances of the International Organization. Defendants have, by dishonest or irresponsible handling of such finances, treated such finances as their own personal property.

(20) *Article IX* concerns the duties and powers of the General Executive Board. Said Board and defendants who control it were guilty of serious acts of misfeasance, malfeasance and nonfeasance under this Article in that: they participated in the conspiracy or common effort aforesaid, or tolerated the conduct of the conspirators or cooperators without protest; they had knowledge of the abuses, criminality, irresponsibility and irregularities rampant in "subordinate bodies" of the International Organization and took no steps to correct them; they knew that many local unions have not held elections in years; they knew that members who dared to run against officials approved by defendants, or those in concert with them, have been fined, locked out of meetings, intimidated or made the victims of violence or other reprisals; they knew that large sums of union dues and assessments, which should go into the treasuries of the International Organization or of its "subordinate bodies", disappear or are embezzled under the label or form of "expenses" or "miscellaneous disbursements" or by some other dodge, or they simply disappear with no accounting of any kind to union members or to anyone else; they knew that members who protest about

union affairs within the International Organization receive threats addressed to themselves and to their families, or such protesting members are the actual victims of beatings, coercions, violence and intimidation; they knew that many union officers within the International Organization have ignored complaints about working conditions and have received payoffs from employers for their cooperation; they knew that businessmen often have to pay shake-down money to union bosses within the International Organization or be faced with strikes, wage demands or other economic reprisals which would have the effect of driving the businessmen to corrupt practices like bribery or to expensive and futile litigation or to bankruptcy or discontinuance of business; they knew that local unions within the International Organization are often controlled by gangsters, racketeers, criminals and extortioners and that many union officials within the International Organization have working alliances with racketeers or with corrupt employers; and they knew that, although the IBT Constitution calls for the trial of persons guilty of such derelictions, such trials are altogether neglected or avoided in most cases, or (where they are conducted) they are fraudulently and dishonestly conducted so as to acquit defendants or those in concert with them against all the evidence.

(21) *Article X, section 7,* requires that defendants, as top officials of the International Organization, should be familiar with the activities of local unions by means of reports furnished by such local unions to the International Organization. Defendants have been guilty of misfeasance, malfeasance and nonfeasance in this respect by not requiring or by overlooking many such reports.

(22) *Article X, section 8,* requires that local secretary-treasurers, business representatives and others who handle funds and property of local unions affiliated with the International Organization shall be covered by suitable surety bonds. Defendants were guilty in this respect of nonfea-

sance, malfeasance and misfeasance to the financial loss of the membership of the locals and the International Organization.

(23) *Article X, sections 9, 10 and 11,* make provisions for the filing of monthly audits by trustees, for the deposit of money and for the audit of books of local unions. Defendants have been guilty of serious misfeasance, nonfeasance or malfeasance in these respects to the great financial loss of the honest membership of the International Organization and its "subordinate bodies".

(24) *Article XI* establishes and defines the duties of the Finance Committee and the powers of the General Executive Board to make loans or advances. Defendants, some of whom constitute said Committee and the General Executive Board, have been guilty in these respects of serious misfeasances, nonfeasances and malfeasances, to the great financial loss of the honest membership of the International Organization and of its "subordinate bodies".

(25) *Article XII, section 12,* makes provision for disputes respecting jurisdiction. Defendants have, in important cases, been guilty of misfeasance, malfeasance and nonfeasance in this respect and have used their powers over union jurisdiction for the perpetuation of themselves and those in concert with them in office or for their own selfish aggrandizement.

(26) *Article XV* concerns the formation of joint councils, the judicial powers of such joint councils and the representation and by-laws of such joint councils. Defendants have been guilty of misfeasance, nonfeasance or malfeasance in connection with the establishment or control of joint councils for their own selfish aggrandizement and for the purpose of advancing the conspiracy or common effort aforesaid.

(27) *Article XVIII* concerns trials and appeals and the procedure for the trial of local officers and members.

Appendix C.

Defendants have been guilty of misfeasance, malfeasance or nonfeasance in these respects and have failed to conduct trials and appeals, or have conducted them dishonestly and fraudulently for the purpose of advancing the aforesaid conspiracy or common effort; they have failed to bring charges against notoriously guilty members, joint councils, locals and officers, as justice, fair dealing and sound trade unionism required; and defendants have tolerated or participated in the violation of specific provisions of the Constitution and have participated in or tolerated the failure by themselves and their subordinates to perform duties here specified in said Constitution; they have tolerated, or participated in, the violation of the oath of loyalty taken by members or officers of the local unions and to the International Organization, as well as violations of oaths of office; they have condoned gross disloyalty and conduct unbecoming the members of any decent trade union, especially when defendants or other high officials of the International Organization have been guilty of such gross disloyalty and conduct; they have condoned gross inefficiency, which hindered or impaired the interests of the locals and of the International Organization, especially when those guilty of such inefficiency were friendly to or sympathetic with defendants or were part of the conspiracy or common effort aforesaid; they have condoned mi ppropriation of union funds within the International Organization; they were themselves guilty of activities which tended to bring the locals or the International into disrepute, especially defendants Hoffa, Beck, Brennan and Brewster; they were responsible for acts and conduct inconsistent with the duties, obligations and fealty of or to members of trade unions, acts and conduct in violation of sound trade union principles; and before the McClellan Select Subcommittee of the United States Senate some of them and some of their associates had frequent recourse to the privilege against self-incrimination under the Fifth Amendment along with known gangsters, racketeers and corrupt labor union lead-

ers within the International Organization; and defendants and those in concert with them failed or refused to revoke the membership of officials or members who were found guilty of crime where such revocation is required by Article XVIII, Section 13, of the IBT Constitution.

(28) *Article XXI* provides for the establishment and conduct of business by local unions. Defendants and those in concert with them have been guilty of serious misfeasance, malfeasance or nonfeasance in office respecting this Article.

(29) *Article XXII* defines the duties of local secretary-treasurers. Defendants and those in concert with them have been guilty of misfeasance, malfeasance and nonfeasance in office respecting this Article.

45. All of the aforesaid violations of the IBT Constitution have been perpetrated or tolerated by reason of the misfeasance, nonfeasance or malfeasance of defendants and those in concert with them.

46. Defendants and those in concert with them have also participated, by the conduct herein complained of, in violation of the AFL-CIO Constitution, although defendants and defendant International Organization are a member of or are affiliated with the American Federation of Labor and Congress of Industrial Organizations, whose president is George Meany and whose secretary-treasurer is William F. Schnitzler, and whose principal office is 815 16th Street, N. W., Washington 6, D. C.; and defendants, though bound as by contract to conform with the AFL-CIO Constitution, either have deliberately violated that Constitution to the great loss and detriment of the honest members of the International Organization, or have deliberately and culpably tolerated the violation of the AFL-CIO Constitution by the International Organization by some of the defendants and by persons in concert with defendants or in sympathy with defendants; particularly,

defendants, by the acts and conduct herein complained of, have been guilty of violations of Article II, section 10 of the AFL-CIO Constitution which requires, as one of the primary objects and principles of the AFL-CIO, protection of the labor movement from any and all corrupt influences and from the undermining efforts of all who are opposed to democratic unionism; in that defendants not only did not protect the International Organization and its "subordinate bodies" from corrupt influences and from undemocratic unionism but they actually participated in a common effort or conspiracy to expand corrupt influences within the labor movement and to deprive the members of the International Organization of free and democratic unionism. Defendants also similarly violated (a) Article VIII, section 7, and Article XIII, section 1(d) of the AFL-CIO Constitution; (b) the AFL-CIO Resolution adopted in December, 1955, by the AFL-CIO Convention in which defendant International Organization participated; (c) the Resolution on Procedures adopted in June, 1956, by the AFL-CIO Executive Council; (e) Ethical Practices Code I, pertaining to local union charters, approved on August 29th, 1956, by the AFL-CIO Executive Council; (f) Ethical Practices Code II, concerning health and welfare funds approved by the AFL-CIO Executive Council January 28th, 1957; (g) Ethical Practices Code III, concerning racketeers, crooks, Communists and fascists, approved by the AFL-CIO Executive Council January 31st, 1957; (h) Ethical Practices Code IV, concerning conflicts of interest, approved by the AFL-CIO Executive Council January 31st, 1957; and (i) additional and similar codes of the AFL-CIO; all to the disrepute, detriment and loss, morally, influentially and financially, of the honest members of the International Organization and of trade unionism in general.

47. Defendants, by their dishonest and corrupt policies, and by the misfeasance, malfeasance and nonfeasance hereinabove set forth, and by the aforesaid conspiracy, conduct

or common effort, have accumulated a vast treasury for the International Organization, totalling more than 37 million dollars, out of the hard-earned wages of the million and one-half members of the International Organization; and they have failed to use said treasury, as the IBT Constitution fairly intended that it should be used, for the advancement and benefit, pursuant to sound trade union objectives, of the International Organization and of its members. On the contrary, they have built up said treasury for the purpose of perpetuating themselves in power and for their own selfish aggrandizement, financially and otherwise; and, from time to time, they have treated said treasury as if it were their own personal property and for purposes having no relationship with sound trade unionism, which requires that such monies should be accumulated not for the sake of accumulation but for the sake of disbursement according to sound labor union objectives.

48. Defendants, particulary defendants Beck and Hoffa, have exercised their powers under the IBT Constitution to maintain a totalitarian labor-union dictatorship which effectively smothers local union autonomy as well as union democracy, and which cuts off from remedy or recourse to intra-union methods of correction plaintiffs and all members or officers who do not enjoy the favor of defendants and of those in concert with them.

49. Unless, upon the basis of this complaint, this Court promptly appoints an individual or a committee as master or masters in equity for the purpose of supervising honest elections of delegates and devising and employing honest procedures for intra-local elections and an honest election at the National Convention of the general officers of the International Organization, control over said organization cannot be recaptured by or returned to its honest members; the union treasury will be despoiled; and a Constitution originally inaugurated for the purpose of establishing democratic trade union procedures and of furthering demo-

atic trade-union objectives will be permanently warped nd irreparably mutilated into a tool for the personal ictatorships of defendants and those in concert with them; nd the law and jurisprudence of our state and federal overnments will lack an instrument or remedy whereby onest rank-and-file members, aggrieved by the lawless and onstitutional depredations of unworthy leaders, can assert their rights as workers and as free citizens.

50. Many of the crimes, delinquencies and violations of he IBT Constitution and many of the irregularities (by mparison with the standards of sound trade unionism) of ome of all of defendants and those in concert with them ave already been authoritatively and publicly exposed by a) the Congressional investigation conducted by Congressan Clare Hoffman as Chairman of the Special Subcommitee of the Committee on Education and Labor of the House Representatives, Eighty-third Congress, (b) the judicial ecision of U. S. District Judge Edmund L. Palmieri in onnection with the attempt to rig the election of Joint ouncil 16 for the purpose of accomplishing defendants' rposes, (c) the revelations made by the hearings before he Select Committee on Improper Activities in the Labor Management Field, (d) local district attorneys, (e) the ew York State Crime Commission, (f) U. S. Attorneys nd (g) the public press in dispatches and articles by careul, accurate and authoritative reporters.

51. The International Organization's Constitution, rticle XVIII, requires the exhaustion of intra-union remeies in the following language:

> "Sec. 14. (a) Every member, officer, local union, Joint Council or other subordinate body against whom charges have been preferred and disciplinary action taken as a result thereof, or against whom adverse rulings or decisions have been rendered, shall be obliged to exhaust all remedies provided for in this Constitution and by the International before resorting to any other court or tribunal.

"(b). Where a member, officer, local union, Joint Council, or other subordinate body, before or following exhaustion of all remedies provided for within the International Union, resorts to a court of law and loses his or its cause therein, all costs and expenses incurred by the International Union shall be assessed against such individual, local union, Joint Council or other subordinate body, in the nature of a fine, subject to all penalties applicable where fines remain unpaid.

"Where such court action is by an individual or by a local union, Joint Council, or other subordinate body against a local union, Joint Council or other subordinate body, the foregoing provision in respect to the payment of costs and expenses shall be applicable in favor of the local union, Joint Council or other subordinate body proceeded against in court."

52. The Constitution of the AFL-CIO provides for no effective intra-union remedies which plaintiffs could use to vindicate their rights hereunder or to prevent the wrongs they seek to enjoin.

53. The aforesaid requirement of the IBT Constitution for the exhaustion of intra-union remedies can have no application to the present case for the following reasons:

(a) Appeal to the channels of intra-union remedy would be illusory and vain because defendants control access to all of these channels and they control and indeed constitute the reviewing authority within the union and since they have demonstrated unfairness by their past conduct, they cannot fairly or reasonably be expected to condemn themselves.

(b) Defendants, particularly defendants Beck and Hoffa, so dominate the machinery set up by the IBT Constitution for judicial or administrative purposes that there would be no fair trial of any dispute between plaintiffs or

defendants, since defendants would be the very judges or administrators to whom plaintiffs would have to appeal.

(c) Defendants themselves are the wrong-doers herein complained of, and it is stultifying to suppose they would condemn themselves.

(d) The union procedures available to plaintiffs are not fair nor are they honestly administered in accordance with the Constitution of the International Organization nor in accordance with the AFL-CIO Constitution; nor in accordance with relevant standards of due process and justice; and they have been applied by defendants and those in concert with them unequally and discriminatorily to favor friends and associates of defendants and to discourage, or visit reprisals upon, those who oppose or are uninfluenced by defendants.

(e) Attempts by members not in sympathy with defendants to exhaust intra-union remedies have been met by defendants' refusal even to consider such grievances; although defendants gave speedy relief, not warranted by the IBT Constitution, to applicants in concert with defendants.

(f) All officials and boards before whom plaintiffs might possibly press their remedy are under the influence, control and direction of defendants and defendants have consistently in the past manifested bias and partisanship to a degree which seriously disqualifies them from any right to judge in these matters or to administer them in the face of the misfeasances, malfeasances and nonfeasances herein enumerated.

(g) Plaintiffs would not, in any case, have time to resort to the futile procedures controlled by defendants.

54. Defendants and those in concert with them are collaborating and conspiring and have for weeks and months prior to the date of this complaint collaborated and

conspired (a) to violate the Constitution of the International Organization and its regular usages and practices; (b) to violate the Constitution of the AFL-CIO and the principles of sound unionism; (c) to select and dominate to their own unconstitutional purposes the Convention delegates; (d) to rig and improperly control or influence the said Convention and the outcome of said election; and (e) otherwise to defeat an expression of the true wishes of the vast majority of the members of the International Organization who by fair election would not choose any candidate proposed by or in league with defendants in view of their past record of utter irresponsibility, and violation of law, of the IBT Constitution, the AFL-CIO Constitution and of decent trade union practices.

55. Defendants' intentional conduct in the past and their aforesaid conspiracy or common effort and the effects of their activities in pursuance of said conspiracy have already reached the stage which endangers the affiliation of the International Organization with the merged AFL-CIO group, to the great detriment of the membership of the International Organization; and because of defendants' misfeasance, malfeasance and nonfeasance in office, the Ethical Practices Committee of the AFL-CIO is presently processing charges against some of defendants and against the International Organization. These charges threaten to result in the ousting of the International Organization and its many "subordinate bodies" from the AFL-CIO, to the great loss and detriment of the honest members of the International Organization and of its honest officers and "subordinate bodies" who resent being dealt with by the closed dictatorship, conspiracy or common effort constituted by defendants and those in concert with them and who resent the imputation of irregularity and dishonesty which defendants' public or notorious acts have cast upon the vast majority of the membership who are honest, law abiding and decent American citizens and workers.

56. Upon information and belief, the approximate amount of money in the treasury of defendant International Organization is Thirty-seven Million ($37,000,000) Dollars. That fund is completely within control of defendants despite the fact that they have exploited it or permitted its exploitation for improper uses or purposes and they have improperly administered the Constitution, practices and usages of the International Organization; and the manner in which they have irresponsibly used funds from such treasury and the manner in which they have aproved the use of union funds belonging to the membership of the local unions for the purpose, for example, of paying improper or exorbitant expenses and high legal fes for persons brought up on charges of crime (some of whom have been convicted) and for the purpose of achieving objectives violating the IBT Constitution and the AFL-CIO Constitution, indicates that stewardship over such large treasury funds is not responsibly or safely being discharged by or entrusted to defendants.

57. In all of the circumstances of this case as herein detailed, no fair or constitutional election choosing, or authorizing the Executive Boards of local unions to appoint, local union delegates to the next Constitutional Convention can be conducted by defendants or by anyone else except upon the basis of secret local union balloting regulated by fair and impartial rules administered under the auspices and supervision of this Court; and in the context of the relevant events, as herein outlined, such secret and fair elections and election procedures for each of the 891 local unions involved are required by the IBT Constitution.

58. In all of the circumstances of this case, as herein detailed, no fair election or elections can be conducted at the next National Convention of the International Organization unless delegates, constitutionally elected or

appointed, are permitted or required to cast secret ballots under fair and impartial rules administered under the auspices and supervision of this Court; and in the context of relevant events, as herein outlined, such impartial and secret balloting and election are required by the IBT Constitution and the Constitution of the AFL-CIO.

59. The General Executive Board of the International Organization is listed as follows in the April 1st, 1957 (the latest available) "Roster of Local Unions with Addresses of Secretaries":

DAVE BECK
General President
25 Louisiana Avenue, N. W.
Washington 1, D. C.

JOHN F. ENGLISH
General Secretary-Treasurer
25 Louisiana Avenue, N. W.
Washington 1, D. C.

DANIEL J. MURPHY
First Vice President
1641 South Kingshighway
St. Louis 10, Missouri

JOHN J. CONLIN
Second Vice President
69 Jefferson Street
Hoboken, New Jersey

SIDNEY L. BRENNAN
Third Vice President
706 First Avenue, North
Minneapolis 3, Minnesota

JOHN T. O'BRIEN
Fourth Vice President
4217 South Halsted Street
Chicago 9, Illinois

FRANK BREWSTER
Fifth Vice President
553 John Street
Seattle 9, Washington

THOMAS L. HICKEY
Sixth Vice President
325 Spring Street,
Room 306
New York 13, New York

WILLIAM A. LEE
Seventh Vice President
133 S. Ashland Boulevard
Chicago 7, Illinois

JOSEPH DIVINY
Eighth Vice President
25 Taylor Street
San Francisco 2, California

Appendix C.

JAMES R. HOFFA
Ninth Vice President
2741 Trumbull Avenue
Detroit 16, Michigan

JOHN ROHRICH, Trustee
2070 East 22nd Street
Cleveland 15, Ohio

EINAR MOHN
Tenth Vice President
25 Louisiana Avenue, N. W.
Washington 1, D. C.

PAUL D. JONES, Trustee
846 South Union Avenue
Los Angeles 17, California

HARRY TEVIS
Eleventh Vice President
701 Plaza Building
Pittsburgh 19, Penna.

JOHN BACKHUS, Trustee
N. W. Corner 11th & Chew St.
Philadelphia 41, Pennsylvania

60. All defendants herein and all General Officers and members of the General Executive Board (listed in the foregoing paragraph) knew, or in the ordinarily prudent exercise of their duties should have known, of the common effort or conspiracy alleged in this claim or cause of action; and they should, in the exercise of their duties as imposed on them by the IBT Constitution and the AFL-CIO Constitution, have taken steps to correct the abuses herein set forth, especially the manifest violations of the IBT Constitution and the AFL-CIO Constitution as well as the widespread and notorious failure of a majority of the Teamster local unions whose delegates will constitute the forthcoming National Convention at Miami, Florida, to have proper credentials or to have properly elected or appointed delegates, required as aforesaid by the IBT Constitution.

61. Unless defendants are enjoined and restrained from conducting the aforesaid election, the said treasury will be further looted in divers ways and especially to the

extent of a continuing large annual salary expense approved by the hand-picked delegates under defendants' control for the purpose of continuing defendant, Dave Beck, in office as General President Emeritus, although he is utterly unfit for any union office on the basis of his past dishonest and irresponsible stewardship.

62. Unless defendants are enjoined and restrained, they threaten to control and completely dominate the Convention aforesaid and especially the said election and its outcome and to put in office defendant, James R. Hoffa, who, on the basis of his past record and his participation in ventures and deals as aforesaid, so seriously violated the IBT Constitution, the AFL-CIO Constitution and the ethical standards of sound trade-unionism and of the AFL-CIO as to deserve expulsion from the International Organization and from the AFL-CIO.

63. Defendant James R. Hoffa is unfit, on the basis of his associations, his misfeasances, malfeasances and nonfeasances in the office of Vice-President, to serve as General President of the International Organization and his election would result in the expulsion of the International Organization from the merged AFL-CIO and the domination of the International Organization by gangsters and racketeers; and he could never be elected by an honest vote of all truly eligible members or delegates.

64. The election of defendant Dave Beck as General President Emeritus would, on the basis of his past record of misfeasance, malfeasance and nonfeasance, be a disgrace to the International Organization and would occasion the expulsion of the International Organization from the merged AFL-CIO group and would be in violation of the purposes and language of the International Organization's Constitution and of the AFL-CIO Constitution in that Dave Beck has been guilty of the dishonest handling of union funds and other criminal or highly irregular stewardship of the

affairs of the International Organization while he has been General President; and he would never be elected by an honest vote of those really eligible to vote."

65. The only possible way in which an election pursuant to the Constitution of the International Organization can be honestly conducted is by the appointment by this Court of a master or several masters in equity to supervise, in the first instance and at the local union level, honest elections of delegates to the National Convention and to prevent the current disfranchisement of members and locals of the International Organization and then to supervise the election of General Officers at a properly convoked and elected Convention; because the International Organization, as victimized by defendants and those in concert with them, is bankrupt of its real wealth, which is responsible stewardship; and must, in accordance with the exigencies of justice and equity and of the IBT Constitution, be put into receivership until responsible stewardship respecting the IBT and AFL-CIO Constitutions can be restored to its members whose democratic rights defendants obstruct and deny.

65a. Defendants and those in concert with them did, between September 30 to October 5, 1957, inclusive, conduct a national convention of defendant International Organization; and in the course of the convention did conduct an alleged election; and the proceedings or minutes of that election are set forth in printed pamphlets published by defendants under title, "Proceedings, 17th Convention, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Miami Beach, Florida, September 30, 1957, First Day, Second Day, Third Day, Fourth Day, Fifth Day and Sixth Day." Said convention was held in violation of the Constitution of the International Organization and in disregard of the rights of its subordinate bodies and members: in that delegates who were not properly credentialed were permitted to attend, to participate and to vote; and in that subordinate bodies

and members in substantial numbers were disfranchised. And defendants and their appointees on the so-called Credentials Committee of said 17th Convention deliberately violated the Constitution of the International Organization in the seating of such delegates; and defendants dictatorially and undemocratically conducted the proceedings of said 17th Convention in such a manner as to disregard proper challenges and as to cut off criticism and debate; and defendants and those in concert with them, in other grave respects, conducted themselves and the said 17th Convention in a fraudulent, rigged and disgraceful manner, as was to be expected from handpicked and rigged delegates.

66. Unless such defendants are enjoined and restrained, they threaten to disfranchise most of the members and locals of the International Organization and to put in office candidates imposed by defendants and those in concert with them, candidates who are unfit to head any decent trade union and who are part of a conspiracy or common effort to violate the IBT Constitution and to defraud the membership of their right to vote and of a conspiracy or common effort to rig and predetermine the Convention election against the real wishes of the vast majority of the membership and of any honest and qualified delegates who could be assembled to represent that membership; and of a conspiracy or common effort to prevent honest trade unionists within the International Organization and its "subordinate bodies" from being represented by competent and honest labor leaders or delegates.

67. Continuance or fruition of the plans, common effort or conspiracy of defendants and of their nefarious stewardship would result in immediate, irreparable and grievous injury, loss and damage to plaintiffs and to all others similarly situated and to many employers and to the public and to the national economy and would result in further raids upon Teamster Union treasuries far in excess of Three Thousand ($3,000.00) Dollars, without counting interest and

costs; and would prejudice the welfare and fortunes of the members, totalling approximately one and one-half million, of the International Organization and of its subordinate bodies in violation of the IBT Constitution and would subject that membership to the arbitrary and ruthless control of and domination by gangsters, racketeers and others who have been in concert with defendants or who have aided defendants in their own personal aggrandizement at the expense of the International Organization.

68. Plaintiffs come into this Court with clean hands and without laches; and the balance of convenience weighs heavily in favor of plaintiffs in view of the patently and notoriously fraudulent and dishonest conduct of defendants in their conspiracy or common effort to violate, as aforesaid, the International Constitution.

69. Plaintiffs have no adequate remedy at law. The national situation presented by the misfeasance, malfeasance and nonfeasance of defendants constitutes a gigantic fraud upon the million and one-half members of the International Organization and their rights under the IBT Constitution. Congress has enacted no statute, nor have the States enacted any laws under which the rank-and-file members could possibly remedy the extensive and nation-wide intra-union debauchery for which defendants are responsible, either because they themselves perpetrated that debauchery or because they tolerated it without protest. Unless this Court acts at the behest of the rank-and-file members who are plaintiffs herein, acting for themselves and others similarly situated, there is absolutely no hope for any future correction of the present scandalous situation by means of intra-union remedies or intra-union personnel and there is scant hope that new legislation can oust defendants from their tenacious and totalitarian control. Plaintiffs have found it impossible to enlist the open support of any union official, although many officials of the International Organization other than defendants have

indicated confidentially that they will support plaintiffs eventually and openly at a time when they deem it proper and safe to do so. The choice presented to the membership is that of remedy under the authority of the law and under the supervision of a court of equity or no remedy at all and of a continuance of the despotism, criminality, irresponsibility of defendants and those in concert with them; and of the violations of the IBT Constitution and of law without any possible redress in the foreseeable future. The membership and minor officials of the International Organization and its subordinate unions have had all doors and avenues of correction closed to them by defendants and those in concert with them. That membership and its victimized officialdom have been terrified in many instances by the threats and coercions of defendants and those in concert with them. They have been robbed of hope because the judicial doctrine of exhaustion of intra-union remedies would impose upon rank-and-file members and upon minor officials litigation expenses which they cannot bear, since they do not, like defendants, control union treasuries and since they would be fighting against defendants and those in concert with them who do control union treasuries and who freely spend union monies for their own personal aggrandizement, for their own perpetuation in office and even to defend themselves against well founded criminal indictments. Specifications of individual events and activities, upon which the broad allegations of this complaint is predicated, present an incredibly frightening picture of intra-union tyranny and lust for power and money by irresponsible leaders, including defendants, of the largest trade union in the United States. Only expensive investigations such as those conducted by Congress or those which could be instituted at the behest of this Court by a master or several masters in equity could piece out in detail the shocking circumstantial premises in fact and in law upon which the conclusions set forth in this complaint are based. Only persons like plaintiffs and those similarly situated

throughout the United States can have a realistic if bitter appreciation of the autocracy, lawlessness and abuse of authority and position which has characterized defendants and those in concert with them; and, for plaintiffs, the legal formula that there is no adequate remedy at law has a special and deep relevancy.

70. No election conducted by defendants, nor any election conducted during their encumbency and under their supervision could be a free or fair election such as the IBT Constitution contemplates in view of the momentum of domination and undue influence which has been generated by the unconstitutional and unlawful acts, as aforesaid, of defendants; and in view of the atmosphere of intimidation and coercion created by defendants and their conduct as aforesaid.

71. Defendants are involved in interstate and foreign commerce; and they do business and conduct activities in every state of the United States and also in Canada. They or their agents and employees, in the course of their official or usual business, represent employees in all of the states of the United States and in Canada, where they all engage in labor activities.

72. The expenses of this litigation and the investigations preparatory to it are a proper claim upon the treasury or funds of the International Organization; as are all legal and other expenses incidental to the conduct of this litigation, including the fees of a master or masters in equity and such staff and legal counsel as shall be needed by such master or masters in equity—since such expenses, fees and disbursements are the only means available (a) to redeem the International Organization from the nefarious control of defendants and those associated with them, (b) to restore it to honorable and useful function as an ethical trade union and as an organization working for the welfare of its members; (c) to reacquire for the International Organization

a rightful place with lawful groups enjoying the respect of workers, employers and the public; (d) to remove from the shoulders of decent employers the incubus into which the International Organization and its "subordinate bodies" had largely degenerated under the evil, unconstitutional and unlawful leadership of defendants; (e) to eliminate corrupt deals with bribing employers which victimized workers by "sweetheart" contracts and other tactics of disgraceful labor relations; and (f) to exile from industrial relations the racketeers, gangsters and extortioners who prey, like vultures, on the national economy.

73. The reason why plaintiffs proceed by Order to Show Cause rather than by usual notice of motion appears from the urgency of the situation described in this complaint; because unless the remedies herein requested are made available expeditiously, they will be ineffectual, since defendants have already taken steps to rig the forthcoming election at the National Convention and to carry out at such Convention the aforesaid conspiracy or common effort in violation of the IBT Constitution. No previous application for the relief herein sought has been made to this or any other Court.

FOR A SECOND SEPARATE AND DISTINCT CLAIM OR CAUSE OF ACTION

74. Plaintiffs repeat and reallege the paragraphs of this complaint numbered 1 through 39; 43, subparagraphs (1), (2), (4), (5), (6), (7), (8), (10), (11), (12), (13), (14), (15), (16), (18), (19), (22), (25), (26), (30), (32), (33), (34), (42), (43), (44); 44, subparagraphs (1) through (6), (8), (11), (13) through (17), (19), (21) through (23), (25) through (29); 45; 46; 49; 51; 52; 53; 57; 58; 59; 62 through 65; 65-a; 69 through 73.

75. More than one-half of the delegates to the forthcoming International Convention to be held at Miami,

Florida, from September 29, 1957 to October 5, 1957, have been designated as such in violation of the IBT Constitution, particularly Article III, section 5 thereof; and neither they nor defendants nor the General Executive Board of the International Organization have any right to conduct that Convention or to participate at such Convention in the election of officers; and such election, in view of the said violations of the IBT Constitution, would constitute a fraud on the members and "subordinate bodies" of the International Organization and would constitute a breach of duty and trust by defendants and a breach of their contractual duty under the said IBT Constitution, which would render the decision, resolutions and actions of said delegates and said International Convention illegal and void.

WHEREFORE, plaintiffs pray that:

1. This Court enjoin and prohibit (pending the determination of these actions and permanently) defendants and those in concert with them from

(a) conducting at the National Convention scheduled for Miami, Florida during the period from September 29-October 5, 1957, the election they contemplate and have arranged;

(b) conducting any national election for the election of any national officer or for the office of General President or General President Emeritus, General Secretary-Treasurer or General Vice President or member of the General Executive Board unless those voting at such election are properly elected or selected as delegates pursuant to the IBT Constitution;

(c) recognizing as valid the credentials of any delegate to said National Convention not elected by the membership of his local union or not appointed as such delegate by an executive board of such local union, duly authorized hereto by a vote of the members of such local union;

(d) permitting any election at any National Convention unless the delegates to such Convention have been chosen as the IBT Constitution requires;

(e) doing any other things or acts in connection with any National Convention which violate the IBT Constitution or which put into effect any ruling or decision of any officer or subordinate body of the International Organization which violates the IBT Constitution;

(f) tampering with the IBT Constitution or attempting, by themselves or by the National Convention which they control, to amend or modify the IBT Constitution in order to validate the election or selection of delegates or to ratify any choice or election of officers or to approve or ratify any resolution adopted at the forthcoming National Convention; or to change at said Convention or otherwise the method of amending the Constitution; or otherwise to amend the IBT Constitution until the further order of this Court;

(g) threatening plaintiffs directly or indirectly, or visiting any reprisals upon them, or interfering with them or any witness in any way because of the conduct of this litigation or because of their status as plaintiffs or witnesses herein;

(h) discriminating against plaintiffs or any witness in any way because they have filed this complaint or given testimony under it.

(i) appointing or establishing a Credentials Committee for the purposes of any National Convention.

(j) Declaring as void and of no effect the aforesaid 17th Convention of the International Organization and all of its agenda, proceedings and decisions, including but not limited to the election of any General Officers of the International Organization and all amendments to the IBT Constitution which the 17th Convention purported to enact.

(k) Enjoining and prohibiting the defendant, James R. Hoffa, from taking office as General President of Defendant International Organization; or ousting him from office if, prior to the service of appropriate preliminary injunction, he has assumed or usurped such office.

(l) Enjoining or prohibiting any and all other persons allegedly elected to office in the International Organization at the said 17th Convention from taking office; or ousting them if, prior to the service of appropriate preliminary injunction, they have assumed or usurped office.

(m) Prohibiting defendants as *de facto* or hold-over officers of Defendant International Organization and those in concert with them from taking any action or applying any decision, practice, usage or policy in conflict with the Constitution of said Organization.

(n) Prohibiting any person purporting to act as officer or official of Defendant International Organization from putting into effect, enforcing or applying any decision of defendants or any of them which does not involve purely ministerial or routine practice, act or function without prior notification given in writing to this Court and without the approval of this Court.

(o) Prohibiting defendants or any person purporting to act as officer or official of Defendant International Organization from disbursing without the prior approval of this Court any sum or sums of money from the International Treasury in excess of $5,000 for any single transaction, business or liability.

(p) receiving any salary or other compensation as officers or officials of Defendant International Organization, on the basis of any alleged election conducted at the aforesaid 17th Convention; and requiring that the salary or other compensation of persons thus allegedly elected shall be accumulated and held in escrow under the direction of this Court.

Appendix C.

(q) Threatening plaintiffs, or any persons who signed affidavits for plaintiffs, or any potential witnesses for plaintiffs, directly or indirectly; or visiting any reprisals upon them; or interfering with them in any way in the conduct of this litigation because of their status as employees, witnesses or affiants herein; or discriminating against them in any way because they have filed this complaint, made any affidavit herein or have given or propose to give any testimony or evidence herein.

(2) This Court appoint a receiver or board of receivers, a master in equity or masters in equity authorized

(a) to devise and establish, pursuant to the IBT Constitution, fair and sound procedures for elections by the members of local unions, wherein and whereby said local union members either (I) authorize by fair and secret ballot the local union's executive board to select proper delegates, qualified as such and as members of the International Organization for attendance at and for voting in a National Convention called pursuant to the IBT Constitution to elect proper and eligible members as General Officers of the International Organization; or (II) themselves, by secret ballot and under fair voting procedures, elect delegates to attend and vote at such National Convention;

(b) to supervise compliance with the IBT Constitution and the AFL-CIO Constitution during the intra-local balloting and during the National Convention;

(c) to confine his or their supervision and authority to enforcement and lawful application of said Constitutions for the purposes of said National Convention election and the intra-local elections which must precede that election, without any attempt at imposing on any member or subordinate body of the International Organization the judgment or preferences of said receiver or receivers, master in equity or masters in equity;

(d) to do the aforesaid things with all dispatch and expedition consistent with their being done well under the

IBT Constitution and the AFL-CIO Constitution and in accordance with the objectives of said Constitutions; and to return the full management of the affairs of the International Organization to the General Officers duly elected at such National Convention convened pursuant to the Order of this Court; and

(e) to obtain the sworn testimony of witnesses from the various locals affiliated with the International Organization for the purpose of ascertaining from such witnesses or from documents in their control a true and accurate account of how the "delegates" to the coming National convention have been selected;

(f) to order payment, out of the general treasury of the International Organization, of the expenses and disbursements of this litigation, including reasonable attorneys' fees and the fees and charges of masters and receivers and all incidental expenses incurred by them in making any investigation or conducting any election or doing anything authorized by this Court, including travel expenses of witnesses in this litigation;

(g) to require defendants to obtain from local unions sworn statements of their officers and members of their executive boards respecting the detailed procedures and methods used or tolerated by them for the selection of their "delegates" to the National Convention; and

3. This Court grant such other and further relief as to it seems just and proper.

DODD, KAPLAN & SCHMIDT,

by THOMAS J. DODD
GODFREY P. SCHMIDT
SHELDON Z. KAPLAN

Office & Post Office Address,
Woodward Building,
Washington 5, D. C.

Appendix C.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

The undersigned, being severally duly sworn, depose and say that they are citizens and residents of the State of New York; that they are plaintiffs herein; and that they have read the foregoing complaint and know the contents thereof and that the same are true of their own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters they believe it to be true.

JOHN CUNNINGHAM
STEVE MILONE
FRANK KENNEDY
THOMAS C. MANNING

Sworn to before me this 18th day of September, 1957.

JOSEPH J. LOBRUTTO,
Notary Public, State of New York
No. 24-7578075
Qualified in Kings County
Term expires March 30, 1958

(SEAL)

Appendix D.

Answer to Amended Complaint.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA.

JOHN CUNNINGHAM, *et al*,
Plaintiffs

v.

JOHN F. ENGLISH, *et al*,
Defendants

Civil Action No. 2361-57.

The Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, in answer to the Amended Complaint filed by Plaintiffs, represents to the Court as follows:

As legal defenses other than those hereafter set forth, Defendant states that the Complaint is insufficient as a matter of law in that (1) jurisdiction is not acquired in this action by virtue of Section 1332 of Title 28 of the United States Code nor by diversity of citizenship; (2) the Complaint violates Rule 8(a) and (e) of the Federal Rules of Civil Procedure in that it does not meet the requirements of brevity and conciseness since it is lengthy, verbose, argumentative and contains allegations immaterial to the issues; (3) the Complaint alleges conspiracy and fraud in loose, general and conclusionary averments and does not particularize the illegal acts, as required by Rule 9 of the Federal Rules of Civil Procedure; (4) the parties charged with such conspiracy named in the Complaint have not been served with process and others who are charged with conspiracy have not been made parties; (5) the Complaint demands that certain officers elected at the 17th Convention

of the International Brotherhood of Teamsters held between September 29 and October 5 not be seated and these officers have not either been served by process or are not named in the Amended Complaint and are, therefore, indispensible parties; (6) the Complaint sets forth allegations of a non-justiciable controversy dealing with political affairs of a voluntary unincorporated association and the election procedure, as required by the Constitution, and the Court will not take jurisdiction over such a matter; (7) the Plaintiffs have not exhausted internal remedies within the framework of the Constitution nor is it shown that any attempt has been made by Plaintiffs to request remedies under the terms of the Constitution; (8). That the Plaintiffs failed and refused to submit evidence of alleged illegal elections or selections of delegates to the Credentials Committee or to the Convention nor have they made any protests or challenges to the Credentials Committee in respect to the seating of delegates; (9) The Complaint fails to contain essential averments upon which a class action can be based and Plaintiffs are not truly representatives of the class which they allegedly represent, there being some 1,500,000 members situated in all parts of the United States.

1. Defendant denies that this Court has jurisdiction over this cause of action by reason of *Section 1332* of *Title 28* of the United States Code. Further answering, Defendant states that the above section referred to authorizes the bringing of suit for violation of collective bargaining contracts between an employer and a labor organization and has no applicability to the complaint or the issues raised herein.

2. Defendant admits the allegations contained in Paragraph 2.

3. Defendant admits that it has its principal place of business at 25 Louisiana Avenue Northwest, Washington, D. C. Defendant denies that all named Defendants have offices at that address or carry on their business from that

address regularly or from time to time. Defendant admits the other allegations of this paragraph.

4. Defendant denies the allegations contained in Paragraph 4.

5. Defendant denies the allegations contained in Paragraph 5.

6-18. In answer to Paragraphs 6 to 18 inclusive, Defendant admits the allegations contained therein.

19. The Defendant denies that this action is brought as a class action for all of the 1,500,000 members of the Defendant. Defendant denies that there are common questions of law and fact affecting their several rights of 1,500,000 members. Defendant denies the remainder of the allegations in Paragraph 19.

20. Defendant admits the allegations contained in Paragraph 20.

21. Defendant admits the allegations contained in Paragraph 21.

22. Defendant admits that John F. English was and still is General Secretary-Treasurer and a member of the General Executive Board of the International. Defendant denies that John F. English is a resident of the District of Columbia. Further answering, defendant states that John F. English is a resident of the State of Maryland.

23. Defendant admits the allegations contained in Paragraphs 23, 24, 25, 26, 27, 28, 29 and 30 inclusive.

31. Defendant admits that Einar Mohn is Vice President of the International and a member of its General Executive Board. Defendant denies that Einar Mohn is a resident of the District of Columbia. Further answering, defendant states that Einar Mohn is a resident of the State of Maryland.

32. Defendant denies the allegations contained in Paragraphs 32 and 33.

34. Defendant admits that it acts under a Constitution. Said Constitution speaks for itself as a matter of law. Defendant denies all of the other allegations contained in Paragraph 34, the same being conclusionary and argumentative and moves that they be stricken.

35. Defendant admits that its Constitution is a contract between Defendant and Plaintiffs which Plaintiffs, as the other members, are required to follow. Defendant denies the remainder of the allegations contained in Paragraph 35.

36. The events alleged in Paragraph 36 have already taken place and require no answer.

37. The Constitution of the Defendant speaks for itself and the allegations contained in Paragraph 37 require no answer.

38. Defendant admits the allegations contained in Paragraph 38.

39. Defendant denies all of the allegations contained in Paragraph 39.

40. Defendant denies all of the allegations contained in Paragraph 40.

41. Defendant denies all of the allegations contained in Paragraph 41.

42. Defendant denies the allegations contained in Paragraph 42.

43. Defendant denies all of the allegations contained in Paragraph 43. Further answering, Defendant states that these allegations are irrelevant, immaterial and have no bearing upon the issues of the validity of the Convention nor do the allegations meet the requirements of Rule 8(a) and (e), they being only conclusionary and argumentative.

44. Defendant denies all of the allegations contained in Paragraph 44. Further answering, Defendant states that such allegations are immaterial and irrelevant to the issues in the case and are conclusionary and argumentative.

45. Defendant denies all the allegations contained in Paragraph 45.

46. Defendant admits that it is affiliated with the American Federation of Labor—Congress of Industrial Organizations whose President is George Meany and whose Secretary-Treasurer is William F. Schnitzler, whose offices are located as described in said paragraph. Defendant denies all of the other allegations contained in Paragraph 46.

47. Defendant denies the allegations contained in Paragraph 47. Further answering, Defendant states that such averments are conclusionary and contain characterizations not pertinent or material to proper pleading.

48. Defendant denies the allegations contained in Paragraph 48.

49. Defendant denies that it is necessary to have a master or masters in equity appointed for the purpose of supervising elections, the elections already having been conducted. Defendant denies the remaining allegations of Paragraph 49. Further answering, Defendant states that said allegations are conclusionary, argumentative and contain characterizations which are improper in pleading.

50. Defendant denies the allegations contained in Paragraph 50.

51. Defendant states that the Constitution of the Defendant speaks for itself and the allegations contained in Paragraph 51 require no answer.

52. Defendant denies the allegations contained in Paragraph 52.

53. Defendant denies the allegations contained in Paragraph 53. Further answering, Defendant states that said

allegations are conclusionary and argumentative and contain immaterial and irrelevant and impertinent matter not material to the issues of this case. Further answering, Defendant states that the allegation that any inter-union remedy would be "illusory and vain" is a conclusion of the pleader as Plaintiffs have never attempted to use an inter-union remedy as required by the Constitution of Defendant. Defendant denies the remainder of the allegations contained in Paragraph 53.

Further answering Paragraph 53(g), Defendant states that Plaintiffs had abundant time to resort to the procedures as required by the Defendant's Constitution.

54. Defendant denies the allegations contained in Paragraph 54. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

55. Defendant denies the allegations contained in Paragraph 55. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

56. Defendant denies the allegations contained in Paragraph 56. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

57. The allegations contained in Paragraph 57 have no materiality to the issues at hand since the election has already been conducted. In the event answer is required of this paragraph, the allegations are denied.

58. The allegations contained in Paragraph 58 have no materiality to the issues at hand, since the election has already been conducted. In the event answer is required of this paragraph, the allegations are denied.

59. Defendant admits the allegations contained in Paragraph 59.

60. Defendant denies the allegations contained in Paragraph 60. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

61. Defendant denies the allegations contained in Paragraph 61. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

62. Defendant denies the allegations contained in Paragraph 62. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

63. Defendant denies the allegations contained in Paragraph 63. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

64. Defendant denies that Dave Beck has been elected as President Emeritus. Defendant denies the remainder of the allegations contained in Paragraph 64. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

65. Defendant states that the Convention has already been conducted by the Defendant. Defendant denies all of the allegations contained in Paragraph 65. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

65(a). Defendant denies all of the allegations contained in Paragraph 65(a). Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

66. Defendant denies the allegations contained in Paragraph 66. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

67. Defendant denies the allegations contained in Paragraph 67. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

68. Defendant denies the allegations contained in Paragraph 68. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

69. Defendant denies the allegations contained in Paragraph 69. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

70. Defendant denies the allegations contained in Paragraph 70. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

71. Defendant denies that it is engaged or involved in interstate and foreign commerce. Defendant admits that it has agents and employees who represent employees of employers in the United States and Canada.

72. Defendant denies the allegations contained in Paragraph 72. Further answering said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

73. The allegations contained in Paragraph 73 have no applicability to any of the issues of this case, Plaintiffs having proceeded by a temporary restraining order rather than by an order to show cause. Said paragraph does not require an answer.

Answering the second separate and distinct claim or cause of action, Defendant adopts by reference and answers the paragraphs referred to in Paragraph 74 of the Complaint as have been answered in the first cause of action.

75. Defendant denies the allegations contained in Paragraph 75. Further answering the said paragraph, Defendant states that said allegations are impertinent, irrelevant and immaterial and are conclusions of the pleader.

As further affirmative and other defenses, the Defendant states that:

1. The Plaintiffs failed or refused to submit evidence to the Credentials Committee or the Convention of any alleged illegality in electing or selecting delegates and are thereby estopped from raising the question here, and are guilty of latches.

2. Some of the Plaintiffs participated in local union elections and made no objection to the conduct of the election of delegates to the Convention from their local unions, either to their local union or to this Defendant or to the Credentials Committee or the Convention, and are estopped from questioning the legality of local union election of delegates.

3. Plaintiffs come with unclean hands since they participated in their own local elections without protest or challenge to the local elections.

4. It is difficult, if not impossible, to meet the immaterial, irrelevant and redundant allegations in the Complaint and the Court should narrow the issues at the pretrial hereof as hereafter described to the real issues which this Complaint attempts to make, i.e. (a) were the delegates chosen and seated in accordance with past practices and usage and in accordance with the construction placed on the Defendant's Constitution by Defendant so that the Convention was legally conducted; (b) does the Court have

jurisdiction to enjoin an unincorporated association from carrying on its normal business affairs when the officers of that association are not before the Court; (c) does the Court have jurisdiction to prohibit officers of an unincorporated association from taking office in accordance with the actions of its Convention, legal or illegal, when those officers have been denied due process in that either (i) they are named Defendants but not served with process, or (ii) are not named as Defendants. In any event, they are not before the Court and their property rights will be denied by lack of due process.

Further, in order that the issues may be narrowed at the pretrial hereof and so that the real legal issues be crystallized for the trial, the Defendant moves to strike the following portions of the Complaint:

1. That portion of Paragraph 34 beginning with the word "under" on the sixth line, to the end of the paragraph, on the grounds that the allegations are conclusionary, argumentative and inflammatory.

2. Paragraph 35 because the AFL-CIO Constitution is irrelevant, immaterial and has no probative connection with the issues in this case.

3. Paragraph 39 because the allegations are general, loose conclusions of the pleader and do not specify the local unions who conducted illegal elections nor the facts setting forth the illegal election of the local unions. "The election of 80% of the delegates planning to attend said National Convention have been hand-picked by and with the tolerance and connivance of Defendants" is a mere conclusionary allegation with no facts to support the statement. It is difficult to answer allegations contained in Paragraph 39 and it should be stricken.

4. Paragraph 40 because the same is in clear violation of Rule 9(b) of the Federal Rules of Civil Procedure that

states that fraud must be set forth with particularity. Here is an alleged "rigging" of a convention election by fraud, deception, stratagem, etc. The entire paragraph is argumentative and contains conclusionary opinions of the pleader and does not set forth any facts of fraud or other illegality.

5. Paragraph 41 because this paragraph contains rhetorical arguments, conclusions and opinions of the pleader and does not specify the facts upon which the conclusions are based.

6. Paragraph 42 as highly inflammatory and prejudicial and there are no facts to support the conclusions of the pleader.

7. Paragraph 43 in its entirety and subparagraphs 1 through 44. They contain allegations of alleged wrongs or misdeeds of Beck, Hoffa, Brennan and Brewster that have been committed many years ago and they have no relevance, competency or probative connection with the issues in this case. They are also redundant, scandalous matters and allegations.

8. Paragraph 44 and subparagraphs 1 through 29. They are redundant, immaterial and contain impertinent and scandalous allegations, are mere conclusions of the pleader and there are no facts alleged to support the conclusionary opinions of the pleader.

9. Paragraph 46 because the allegations contained in that paragraph are irrelevant, immaterial and, assuming arguendo, a violation of the AFL-CIO Constitution by the General Officers or the Code of Ethical Practices, has no relevancy or materiality with the issues in this case.

10. Paragraph 47 in its entirety because it is scandalous and impertinent and a mere conclusionary, rhetorical vehemence of the pleader and has no relevancy or materiality to the issues in the case.

11. Paragraph 48 of the Complaint as being redundant and a conclusionary opinion of the pleader.

12. Paragraph 49 because it contains conclusions and arguments and opinions of the pleader and is not a factual allegation but rhetoric and argument of the pleader and should not be in a complaint.

13. Paragraph 50. The allegations in this paragraph are arguments and not facts and do not properly belong in a complaint.

14. Paragraph 54 because it is argumentative and contains conclusions of the pleader and is redundant and rhetorical.

15. Paragraph 55 because the matters alleged in that paragraph have no relevancy or materiality to the issues in the case.

16. Paragraph 56 because it is scandalous and impertinent allegations and contains immaterial matters and is argumentative.

17. Paragraph 60 because it is argumentative and does not allege any facts of what the conspiracy consists of or their means of acquiring knowledge of any conspiracy.

18. Paragraph 61 as scandalous and impertinent.

19. Paragraph 62 because the acts and misdeeds of Hoffa many years ago have nothing to do with the issues in this case.

20. Paragraph 63 in its entirety as scandalous and impertinent and containing conclusions and is argumentative.

21. Paragraph 64 in its entirety as argumentative and having no relevancy to the issues in this case.

22. Paragraph 65 because it is rhetorical, argumentative and not a factual statement.

23. Paragraph 66 because it contains conclusions, arguments and immaterial allegations.

24. Paragraph 67 because it contains immaterial, redundant and conclusionary statements.

25. Paragraph 69 in its entirety as argumentative, rhetorical conclusions of the pleader.

26. Paragraph 70 in its entirety as it is a conclusion of the pleader, argumentative and contains no facts upon which such allegations could be based and no factual allegations are set forth.

27. Paragraph 72 as highly scandalous and impertinent and having no relevancy or materiality to the issues in this case.

Respectfully submitted,

.....

MARTIN F. O'DONOGHUE

.....

THOMAS X. DUNN

.....

PATRICK C. O'DONOGHUE

.....

GIRARD TREANOR

Counsel for Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.

Appendix D

DISTRICT OF COLUMBIA: SS

JOHN F. ENGLISH, being first duly sworn upon oath, deposes and says that he is General Secretary-Treasurer of the Defendant, and, as such, has read the foregoing Answer by him subscribed; that the matters set forth therein are true to the best of his knowledge and belief.

.....

JOHN F. ENGLISH

Subscribed and sworn to before me this sixteenth day of October, 1957.

.....

Notary Public, D. C.

Certificate of Service.

This is to certify that a copy of the foregoing "Answer" of the Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, has been served by leaving a copy hereof at the office of counsel for the Plaintiffs this sixteenth day of October, 1957.

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Appendix E.

Consent Order.

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

(Civil Division)

JOHN CUNNINGHAM, *et al.*,
Plaintiffs,
v.
JOHN F. ENGLISH, *et al.*,
Defendants.

Civil Action No. 2361—57.

This cause came on to be heard this term of court upon plaintiffs' demand for equitable relief as set out in the amended complaint filed herein, which amended complaint prays in the main for the calling of a new convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and for a new election of officers in accordance with the provisions of the International's Constitution. After 22 days of trial during which oral testimony was heard and documentary evidence received, the parties hereto have consented and do hereby consent to the entry of the decree hereinafter set out.

1. It is hereby ordered that the preliminary injunction heretofore entered in this case on the 23rd day of October, 1957 be and the same is hereby dissolved and nullified, and the amended constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America adopted at the 17th convention of the International at Miami, Florida in October, 1957 shall forthwith go into effect, provisionally in accordance with the following para-

graphs of this decree, and the officers of the International elected at the convention shall forthwith take office provisionally in accordance with the following paragraphs of this decree.

2. Godfrey Schmidt, nominated by the plaintiffs, L. N. D. Witts, Jr., nominated by the defendants, and Judge Nathan Layton, nominated jointly by the plaintiffs and defendants, are hereby appointed and shall serve as a Board of Monitors for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America for such period of time and with such duties as are hereinafter set out.

Judge Nathan Layton, the Monitor jointly nominated by the parties, shall serve as chairman of the Board of Monitors. A majority vote of the Monitors shall be determinative of any action to be taken by the Monitors. In the event of the inability or unwillingness to serve, or other disability on the part of any Monitor, he shall be relieved of his duties and discharged of the obligations hereunder, and a successor Monitor shall be appointed in his place by the Court upon nomination by the party or parties, as the case may be, who nominated the Monitor to whose office the successor Monitor shall be appointed. Furthermore, the Monitors are at all times subject to removal by this Court in the exercise of its discretion for any cause and are subject as officers of the Court to supervision and direction of the Court in performing these duties as hereinafter enumerated.

3. The Board of Monitors in order to insure the enforcement and protection of all rights of the individual members and the subordinate bodies of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as guaranteed by the provisions of the International constitution, in particular,

a. the right to vote periodically for elective officers,

b. the right to honest advertised elections,

c. the right to fair and uniform qualifications to stand for office,

d. the right to freedom to express views at meetings

shall counsel with the General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and make recommendations upon review of appeals taken pursuant to provisions of the International constitution.

4. The Board of Monitors shall draft a model code of local union by-laws not inconsistent with the International constitution, or model provisions for inclusion therein not inconsistent with the International constitution, which model code or provisions the General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall recommend for adoption by the local unions.

5. The General Executive Board in consultation with the Board of Monitors shall review and where needed establish accounting and financial methods, procedures and controls affecting all funds and properties held, received and disbursed by or on behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and its subordinate bodies. All persons having custody or management of such funds or properties shall be required to adhere to the recognized legal and equitable standards and obligations imposed upon fiduciaries in the handling of such funds and properties.

6. No officer of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall have a personal financial interest which conflicts with the full performance of his fiduciary duties as a representative of the International, nor shall he own or have a substantial business interest in any enterprise with which the International Brotherhood of Teamsters, Chauffeurs, Ware-

housemen and Helpers of America bargains collectively, or in any business enterprise which is in competition with any other business enterprise with which his union bargains collectively, nor shall he own or have a substantial business interest in a business enterprise a substantial part of which consists of buying from, selling to, or otherwise dealing with the business enterprise with which the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America bargains collectively.

The provisions of this section do not apply in the case of an investment in the publicly traded securities of widely held corporations which investment does not constitute a substantial enough holding to affect or influence the course of corporate decision.

7. The General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall examine and review the status and condition of affiliated local unions under trusteeship to the end that trusteeships be removed and self government restored with all deliberate speed consistent with the best interests of the membership of such locals. The Board of Monitors shall examine and review the status and condition of locals where trusteeships are maintained and shall counsel with and make recommendations to the General Executive Board looking toward the removal of trusteeships where removal is consistent with the best interest of the membership of the locals.

8. The Board of Monitors appointed herein shall serve as such for at least one year and thereafter until a new convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is held at which convention officers are duly elected and sworn; provided, however, that this Court after one year from the date of this order, in its discretion upon petition of the defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or upon petition of the Board of Monitors may discharge and release

said Board of Monitors, or the Court on its own motion may discharge them at any time.

A new convention and election of officers shall be held at any time after the expiration of one year from the date of this order when the General Executive Board by majority vote shall resolve to call such convention and hold such election. The Board of Monitors may recommend to the General Executive Board after the expiration of one year from the date of this order that a new convention and election be held. In all events such new convention and election of officers must be called and held within the time specified by the provisions of the constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as amended.

9. The call for a new convention and election of officers of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be issued in accordance with the International constitution by the General Executive Board.

a. Delegates to such convention shall be elected in strict and literal compliance with the International constitution.

b. The General Executive Board of the International shall recommend to its affiliated locals that such delegates be elected by secret ballot and, where practicable, under the supervision of such outside agencies as the Honest Ballot Association.

c. The examination and approval of all credentials submitted by delegates to said convention shall be made by the convention Credentials Committee and the Board of Monitors is authorized to counsel with such Credentials Committee and make recommendations to it.

10. The Board of Monitors shall receive compensation for the services performed by them in an amount to be

determined by this Court, such payment to be made by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

11. The Board of Monitors shall make a report at least semi-annually to this Court and at the conclusion of its services and may make recommendations after consultation with the General Executive Board for amendments to the International constitution for proposal at the next International convention.

12. The General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall make available to the Board of Monitors such clerical and technical help as is reasonably required and necessary.

13. No reprisal of any sort or nature shall be taken against the plaintiffs or any witnesses or affiants in this case or any other person or persons because of their participation in or connection with this case and the General Executive Board shall press charges against anyone violating this section.

14. The International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America shall pay the fees of counsel for the plaintiffs and expenses incurred by those in the prosecution of this action, such fees and expenses to be determined by this Court.

Ordered this 31st day of January, 1958.

F. DICKINSON LETTS
Judge

We consent:

Godfrey P. Schmidt
M. Joseph Blumenfeld
Thomas Dodd

I Consent:

Edward Ernst Williams

Appendix F.

Memorandum Opinion.

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JOHN CUNNINGHAM, *et al*
Plaintiffs

vs.

JOHN F. ENGLISH, *et al*
Defendants

Civil Action
No. 2361-57.

After twenty-two days of trial and when the plaintiffs had rested their case, the parties presented to the Court the consent order which is involved herein. The Court was not called upon to weigh the evidence which had been adduced.

The plaintiffs are rank and file members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated association. The defendants are an unincorporated association, and the officers thereof who were elected at the 1957 convention held in the City of Miami, Florida.

The action had been brought to restrain such officers so elected from assuming the duties of their offices upon the ground that the convention had been rigged and that the election of such officers was not an expression of the membership of such International Brotherhood. As a matter of convenience throughout this Memorandum the International Brotherhood above mentioned and the individual defendants will be referred to as the Teamsters.

By the consent order the individual defendants were permitted provisionally to assume the duties of the offices to which they had been elected.

Several motions are before the Court for decision. They will be dealt with separately. Because of its overall importance, the Court will first consider the petition of the Monitors for construction, reformation and/or modification of the consent order. The power and authority of the Court to reform or modify the consent order is challenged, it being asserted by the Teamsters that the consent order must be read *literally*. It seems appropriate that consideration of such question should have first consideration. The law relating to this controversy is fully expounded by Justice Cardozo in *United States* v. *Swift & Co.*, 286 U. S. 106, wherein it is said:

> "We are not doubtful of the power of a court of equity to modify an injunction in adaptation to changed conditions though it was entered by consent. . . . Power to modify the decree was reserved by its very terms. . . . If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need. . . . We reject the argument for the interveners that a decree entered upon consent is to be treated as a contract and not as a judicial act."

The law so stated by Justice Cardozo has to the knowledge of this Court never been disturbed, altered or in any manner changed. The conclusion is reached that a construction of the consent order requires a determination of the basic purpose for which the order was entered. Bearing in mind that the individual defendants were permitted provisionally to assume office, it is clear from a reading of the consent order, that the basic purpose of the order was

to pave the way for a new convention of the International Brotherhood and for a new election of officers in accordance with the provisions of the International constitution. The consent order was entered with the tacit understanding that the evidence which had been adduced at the trial for the purpose of establishing plaintiffs' claim that the Miami convention was rigged through corrupt practices for the purpose of permitting the leaders to control the action of the convention by depriving the rank and file membership of their democratic processes in the selection of delegates to such convention ended to prove that claim.

The consent order provided for the appointment of a Board of Monitors, one member to be selected by plaintiffs, one by the defendants and the third by the Court. The question arises as to what powers the Board of Monitors has. The Court is of opinion and holds that their powers were not limited but included all proper efforts on the part of the Board to assure the rank and file membership of the International organization that a new convention would be conducted according to the provisions of the International constitution and assuring the membership that their democratic processes would not be violated. In other words, the Board of Monitors was empowered to exert every known method of achieving the basic purpose as set forth in the consent order, to wit, that a new convention would be free of corruption and in recognition of the rights of the membership.

It was tacitly understood that the evidence which had been adduced showed that officials of the International organization and of many of the Locals were corrupt and a menace to the constitutional rights of the members. It, therefore, became necessary for the Monitors to proceed to see that the International and the Locals were freed of corrupt influences by the processes of a general house-cleaning. The activities of the Monitors to accomplish such purpose gave rise to many of the difficulties presented by the motions now before the Court. The consent order

places this duty and responsibility upon the Board of Monitors.

It must be kept in mind that the Monitors are officers of the Court and subject to its supervision and direction to effectuate the order according to its spirit and basic purpose. The Court does not subscribe to the view that the duties and privileges of the Monitors were merely advisory.

It is true that in the early days of the monitorship the Teamsters gave substantial compliance with the orders of recommendation but it may be observed that in those early days the work of the Monitors was preparatory to its vital purposes. The trouble arose when the Monitors proceeded to clean up the International organization and many of the Locals by seeking the dismissal of persons in position of power and authority who were known to be or suspected of being trouble makers and of a mind to control elections and conventions contrary to the constitutional rights of the members. At about this time the Monitors also set out to install by-laws in the Locals which would insure to the membership honest and uncontrolled elections. It was at this point that the Teamsters began to frustrate and block the Monitors in their efforts. In some instances they even refused to confer with the Monitors in a way which amounted to an unspoken rejection of the recommendations of the Monitors. This was in violation of their rights, knowing that if they doubted the reasonableness of such recommendations or doubted that the recommendations were pertinent to the basic purpose of the order, they had recourse to the Court. Upon such matters of disagreement, recourse has always been available to the Court for its ruling and determination of the existing controversy.

As has been indicated, the consent order is not to be construed by a literal reading of its provisions. The Monitors are officers of the Court and their powers are not limited by the grant of express powers. All other powers reasonably necessary to effect the basic purposes of the order are implied and available to the Monitors and in

view of changed circumstances the inherent powers of the Court are at command to achieve the basic purposes of the order.

Such changed circumstances arose and have continued since the Teamsters ceased cooperation with the Monitors and refused or ignored the reasonable and relevant requests of the Monitors. The conduct of the Teamsters in such respect was in disregard of their obligations to afford good faith compliance with the reasonable and pertinent orders of recommendation issued by the Monitors.

Such rejection of the orders of recommendation was with full knowledge that the individual defendants were permitted provisionally to assume the duties of the offices to which they have been elected.

The language of the consent order carries the meaning that such permission to assume office is temporary and granted in view of existing known conditions and of assumed obligations. By definition and by nature a provision of this kind is subject to change.

The court has examined each of the orders of recommendation mentioned in the petition of the Monitors for construction, reformation and/or modification of the consent order as amended. The Court finds that each of such orders of recommendation is reasonable and relevant to the basic purposes of the consent order. The Teamsters are obliged to comply with such orders of recommendation and in good faith cooperate with the Monitors to achieve the purposes expressed therein.

It is unnecessary to specifically comment on the several orders of recommendation which have been ignored by the Teamsters. The Court, however, will mention them by number, namely, Numbers 4, 11, 12, 14, 16, 17, 18, 19, 20 and 21. As has been stated, each of these orders of recommendation is reasonable and relevant to the basic purposes of the consent order and is deemed to be of primary importance in the work of the Monitors.

When the consent order was considered and agreed upon it was believed that necessary preparation to assure that a

new convention would be organized and conducted honestly without dictation of the bosses and in full accord with democratic principles in the interest of the dues paying members would be accomplished within one year and so the consent order was written in the belief and understanding that good faith compliance would be accorded by the Teamsters. Since the Teamsters have failed in that requirement and since the Teamsters have blocked and obstructed the efforts of the Monitors to achieve the necessary clean-up in the International and the Locals, the very essence of the consideration upon which the time element rested has been completely destroyed. The Court finds it necessary to modify and amend the consent order by deleting therefrom the privilege granted the Teamsters of calling a new convention after one year and inserting the following provision:

> "The time for the convention shall be subject to recommendation by the Board of Monitors to the General Executive Board of the International, with the exact time of holding the convention being subject to the final approval of the Court."

The foregoing modification of the consent order becomes imperative since the Teamsters have, without the knowledge and consent or approval of the Board of Monitors or of the Court, issued a call for a convention in the early part of March, 1959. Such action on the part of the Teamsters was in disregard of their obligation to make good faith effort to pave the way for the new convention by cleaning house and making preparation for the return of control to the rank and file membership through democratic processes. The Court now declares such attempt to call a new convention is null and void and the Teamsters are ordered to promptly give appropriate notice to the membership that the convention will not be held as announced in the call.

The failure of the Teamsters to cooperate and to accord good faith compliance with the orders of recommendation of the Monitors to achieve the basic purposes of the consent

order has occasioned loss of valuable time. Now that the views of the Court respecting many matters in dispute are known the Court will expect prompt compliance with such orders of recommendation which have been made and such reasonable orders of recommendation as may be made by the Monitors touching the matter of housecleaning and compliance with all provisions tending to assure that the next convention will be organized and conducted honestly in such a manner as to be free of control by labor bosses while promoting in all respects the interest of the dues paying members.

Remedies are not lacking in our judicial processes if the orders of the Court are violated, disregarded or ignored. As of now they need not be mentioned or considered.

The Second Amendment to the Petition for Construction requests the Court (a) to instruct the Monitors concerning the proper interpretation of Article X, Section 5(c) of the 1952 International Consfitution; (b) to instruct the Monitors concerning the proper interpretation of the 1957 Amendment to Article X, Section 5(c) of the International Constitution dealing with the payment of one month's dues in advance by those members on check-off to insure their good standing; and (c) to determine whether or not there had been sufficient publication of the 1957 Amendment as a matter of law and whether there was a denial of due process. The Board raised these issues specifically with respect to Local 377 in Youngstown.

Under order of recommendation No. 23, regarding the eligibility of Joseph Larry Carrelly, William James Gaw and Joseph Sammartino, who were nominated for office in Local Union No. 377 of Youngstown, Ohio, the Board of Monitors ruled that there had not been proper promulgation of the 1957 Amendment to Article X, Section 5(c). The Local in Youngstown did not publish or post this Amendment on any bulletin boards and did not give notice to the members of the effective date of this Amendment. Carrelly did not receive a copy of the March issue of The

International Teamster and Sammartino and Gaw did not read the notice that appeared in the March issue. These men were working under a check-off and their employer paid the dues later than the first of the month. Further, these applicants had no opportunity to pay one month's dues in advance because they did not know of the Amendment and were not given reasonable notice of when the Amendment would be put into effect. Thus, there was a denial of due process in the application of this Amendment.

The 1957 Amendment to Article X, Section 5(c) was purportedly promulgated by being published in the March, 1958, issue of The International Teamster and that notice, a copy of which was attached to the Second Amendment as Monitors' Exhibit No. 27, stated that the Amendment was "now in effect". The 1957 Constitution became effective on January 31, 1958, with the entering of the consent order. Hence, this Amendment was effective on February 1 and March 1, 1958, and members who had not paid one month's dues in advance on those dates were disqualified. When it went into effect, members immediately became disqualified to run for office. The notice in the March issue stating that the new requirement was "now in effect" is a clear indication that it was in effect on March 4 or 5. There was no prospective effective date stated.

Inasmuch as the membership did not receive a reasonable time within which to comply with the new constitutional requirement, General President Hoffa should be ordered to republish this Amendment and put it into effect three months after its publication. Each local union should post it on its bulletin boards three times and notify all members of its publication and the effective date of the Amendment.

The Court sees another general objection to the 1957 Amendment. Under the check-off system the employer becomes the agent of the Union and as such withholds for the benefit of the Union the dues owed by its member employees. The 1957 Amendment requires payment of one

month's dues in advance by members subject to the check-off system in order to qualify as candidates for office. Members of the Union not subject to the requirements of the check-off system who are, through favor or otherwise, permitted to pay their dues directly at the office of the Local are not required to make advance payment of dues. Any such privileged member therefore has an advantage over members subject to the system. The system affords the local labor bosses the opportunity to control the management of the Locals by limiting the number of members eligible for office. So operated the system amounts to a discrimination in favor of members permitted to make direct payment over those subject to the check-off system. It is a device by which incumbents are perpetuated in office. Because of such discrimination it is contrary to public policy and invalid.

The Monitors have questioned the legality of the merger of Locals 183 and 959 in Alaska. No direct reference may be found in the national Constitution as of 1952 nor as amended in 1957 to the subject so presented. Article XIX of both 1952 and 1957 provides, "No local union can dissolve, secede or disaffiliate while there are seven dissenting members." The official minutes of the December 12, 1957, meeting of Local 183 of Fairbanks, Alaska, indicates that twelve members voted against the consolidation of Local 183 and Local 959. The Courts and the National Labor Relations Board have set forth certain conditions which must be fulfilled. The consolidated unions must be of comparable size and must have an equal voice in deliberations; there must be an approximate equal division of officers between the unions; and the consolidation must reflect a truly democratic expression of the views of the membership. The Courts are in agreement that a vote taken on such an important issue as dissolution or merger is void where the members have not been sufficiently apprized before hand that anything so far outside the ordinary business of the union is to be presented at the

meeting. This is particularly true where the meeting as in the present case on December 12, 1957, is a special and not a regular meeting. The notice given must be such that it can reasonably be concluded that in the ordinary course of events the membership generally if not entirely would have the opportunity of acquiring knowledge that the meeting was to be held and of the business to be transacted. The notice of the meeting must give its object and where the meeting is to deal with so important a matter as dissolution or merger, it is not sufficient to state that the meeting is very important. Notice must be timely as well as specific. The official minutes of the December 12, 1957 meeting of Local 183 of Fairbanks reflect that the question of merger was never presented as a single clear-cut issue. The approval of the merger was treated as a part of or as a prerequisite to the request for the granting of autonomy and the two questions were presented for a single vote.

The record does not disclose that any sufficient and adequate notice had been given to the members that the question of merger would be considered and voted upon. The Court thinks that for this reason alone the merger so effected will be considered as void.

The Court is asked to consider and determine the applicability of Rule 23(c), Federal Rules of Civil Procedure, to the facts of the case.

The Court is presently of the opinion that the Rule is not applicable for the reason that the consent order is not a final settlement of any essential issue. The controlling issue in the case arose from the request of the plaintiffs that the individual defendants herein should not be permitted to assume the duties of the offices to which they had been elected. Such issue has not been determined. By the consent order such officers so elected were permitted to proceed upon the duties of their offices provisionally. Such permission was temporary only and subject to revocation. The Court views the consent order as procedural and within the control of the Court.

Appendix F.

There has been presented to the Court for decision the motion of the Teamsters to disqualify and remove Godfrey P. Schmidt as a Monitor. The motion rests primarily upon the allegation that while serving as a Monitor the said Schmidt has continued to represent employers in collective bargaining negotiations with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; that Schmidt's representation of such employers having contractural relation with the International Brotherhood presents such a direct and clear conflict of interest on his part as to disqualify him from further service as a Monitor pursuant to the Court order. The Court finds that the Teamsters have failed to exhibit such conflict of interest as alleged. Accordingly the motion seeking the removal of Schmidt as Monitor is denied.

The Court requests the Chairman of the Board of Monitors to present for the purposes of the Court findings of fact, conclusions of law and an order consistent with this Memorandum Opinion.

F. Dickinson Letts,
Chief Judge.

December 11, 1958.

Appendix G.

Order of the Court Construing and Modifying Consent Decree.

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

(Civil Division)

JOHN CUNNINGHAM, *et al.*,
Plaintiffs,

v.

JOHN F. ENGLISH, *et al.*,
Defendants.

Civil Action No. 2361-57.

Upon consideration of the Findings of Fact and Conclusions of Law made this 9th day of February, 1959, it is hereby

1. ORDERED, that the Defendant provisional officers and the Defendant International shall comply promptly and fully with the Board of Monitors' Orders of Recommendation No. 4, No. 11, No. 12, No. 14, No. 16, No. 17, No. 18, No. 19, No. 20, No. 21 and No. 23, and the Supplemental Orders to No. 16 and No. 19.

2. ORDERED, that the Defendant provisional officers and the Defendant International shall cooperate and assist the Monitors in accomplishing the basic purposes and various provisions of the Consent Decree and, in fulfilling their obligation to assist and cooperate in good faith with the Monitors, the Defendant provisional officers and the Defendant International shall comply promptly and fully

with all future Board of Monitors' Orders of Recommendation that are reasonable and relevant to the basic purposes of the Consent Decree.

3. ORDERED, that Section 8 of the Consent Decree is modified and that the first two sentences of the second paragraph are deleted therefrom and the following provision is inserted in their place:

> "The time for the next convention shall be subject to recommendation by the Board of Monitors to the General Executive Board of the International Brotherhood, with the exact time of holding the convention being subject to the final approval of the Court."

4. ORDERED, that the convention call by the Defendant provisional officers and Defendant International on September 16, 1958, is null and void.

5. ORDERED, that the Defendant provisional officers and the Defendant International Union shall advise all local unions and other subordinate bodies that the call for a convention in the City of Chicago, March 15-19, 1959, is null and void. That all local unions and other subordinate bodies shall be notified that said convention shall not be held. Further, that the Defendant provisional officers and the Defendant International shall have a notice read at all February local union meetings and published in the February issue of *The International Teamster* to the effect that the authorization of a convention call have been declared null and void by the Court and that the next convention will not be held as previously announced by the Defendants.

6. ORDERED, that the Defendant provisional officers and the Defendant International shall adopt and apply the interpretations of the provisions of Article X, Section 5(c), of the 1952 International Constitution and the 1957 amend-

ment thereto, as set forth in Conclusions of Law Nos. 16 and 17.

7. ORDERED, that the Defendant provisional officers and the Defendant International Teamsters Union shall give the membership of the International Union, at least three (3) months' notice of the effective date of the 1957 amendment to Article X, Section 5(c) and shall notify the members that the 1957 amendment will become effective on May 1st, 1959, and the Defendants shall have such notice, together with the full text of Article X, Section 5(c), and an explanation thereof, which shall be subject to approval by the Monitors (a) published in the February, March and April, 1959 issues of *The International Teamster*, (b) read at the February, March and April, 1959, local union general membership and divisional meetings, and (c) posted during the months of February, March and April, 1959, on all bulletin boards where local union notices are customarily posted.

8. ORDERED, that the Defendant provisional officers and the Defendant International shall have a notice read at all February local union meetings and published in the February issue of *The International Teamster* to the effect that the Court has found that the Defendant International has presented no evidence to support its motion to disqualify and remove Godfrey P. Schmidt, Esquire, as a Monitor, and this motion was wholly without merit.

F. DICKINSON LETTS,
Chief Judge, United States District Court
for the District of Columbia.

Appendix H.

Petition for Writ of Prohibition.

UNITED STATES COURT OF APPEALS,

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

GENE SAN SOUCIE, Individually and as President of the INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA and as President of INDIANA LOCAL NO. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, THE INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and LOCAL NO. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioners,

against

THE HONORABLE F. DICKINSON LETTS, JUDGE OF THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF COLUMBIA,

Respondent.

No. 15,076

Come now the Petitioners, Gene San Soucie, individually and as President of the Indiana Conference of Teamsters and as President of Indiana Local No. 135 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Indiana Con-

ference of Teamsters and Local No. 135 and present this, their petition, for the issuance of a writ of prohibition, directed to the respondent, the Honorable F. Dickinson Letts, commanding, compelling and directing him to refrain from interference with the right of the petitioners and all other members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the International) to hold an election of officers of the International and to delete from a certain "modification" order dated February 9, 1959 made by the Honorable F. Dickinson Letts in the cause entitled "John Cunningham, *et al.*, Plaintiffs, against John F. English, *et al.*, defendants", bearing Civil Action No. 2361-1957, United States District Court for the District of Columbia, Section 3, thereof, whereby he purports to postpone indefinitely the calling of a convention by the General Executive Board of the International for the holding of such election, and in support of this petition say:

1. Petitioner Gene San Soucie is President of the Indiana Conference of Teamsters and President of Indiana Local No. 135 of the International and a member thereof in good standing, having paid all dues and other charges required of him and having fully complied with the requirements of the constitution of such Local dealing with eligibility for maintenance of membership therein.

Petitioner, Indiana Conference of Teamsters, comprises fifteen local unions of the International, with more than 30,000 members.

Petitioner, Local No. 135, is an unincorporated association of more than 9,000 members affiliated with the International.

2. Petitioner Indiana Conference of Teamsters is a party to this proceeding pursuant to approval by duly elected delegates at a conference held on the 15th day of January, 1959 of such legal action as may be proper for the assurance of the right of the membership to the free election of officers of the International.

3. Petitioner Local No. 135 is a party to this proceeding pursuant to approval duly given by the stewards thereof on the 5th day of April, 1959.

4. Respondent, the Honorable F. Dickinson Letts, is a Judge of the United States District Court for the District of Columbia.

5. Petitioners bring this proceeding individually and on behalf of all others similarly situated, to assure that they and such others will retain their rights under the constitution of the International to hold free and democratic elections.

6. The said cause entitled, "John Cunningham, *et al.*, against John P. English, *et al.*", as appears from the amended complaint therein, a copy of which is attached hereto as Petitioners' Exhibit A, alleges in Paragraph 19 a class action on behalf of all members of the International. The complaint alleges (Paragraph 65a) that the election held at the October 1957 convention of the International was rigged and prays (Section 2(a) of the prayer for relief) for the calling of a new convention at which a new election would be held pursuant to the constitution of the International.

An answer to the amended complaint was filed by the defendants on October 16, 1957, a copy of which is hereto annexed as Petitioners' Exhibit B.

7. At the conclusion of the plaintiffs' case and before any testimony was offered by the defendants, a consent order settling the case was entered into and signed by the respondent, Judge F. Dickinson Letts, on January 31, 1958. A copy of the consent order is hereto annexed as Exhibit C.

The consent order provided for the appointment of the officers elected at the allegedly "rigged" convention of October, 1957 provisionally, and authorized the General Executive Board of the International to call a new election with full democratic safeguards (Consent Order, Section 9)

at the expiration of one year from the date of the order. Such safeguards of the democratic process included guarantees that delegates to the convention would be elected in strict compliance with the International constitution; that the delegates would be elected by secret ballot under the supervision of the Honest Ballot Association; and that the examination and approval of the credentials of the delegates to the convention would be made with the counseling and recommendations of the Board of Monitors. After the election the Board of Monitors appointed pursuant to the said order would cease to serve (Consent Order, Section 8).

8. In September 1958, after the consent order had been in operation for over seven months, two of the monitors petitioned the respondent for "modification" of the consent order. On December 11, 1958 the respondent issued his memorandum opinion concurring with the views of the two monitors in a manner to assure their indefinite continuance in office. This opinion stated that the Court found it necessary to "modify" the consent order to the extent of "deleting therefrom the privilege granted the teamsters of calling a new convention after one year" and substituting a provision making a new election subject to the recommendation of the monitors. A copy of the respondent's memorandum opinion is hereto annexed as Exhibit D.

9. On February 9, 1959 the respondent made his order of modification "modifying" the consent decree. In fact, this order was not a "modification" of the original order, but constitutes a new order, in that it destroys the right of the membership to a new democratically conducted election of officers. This was accomplished at Section 3 of the modification order by deleting from the consent order the provision authorizing the calling of a new election after one year and inserting in lieu thereof a provision leaving the time of the next convention for the election of officers to the judgment of the Board of Monitors and the Court. Thus, petitioners and the 1,600,000 members of the International are placed in the humiliating position of representation for

an indefinite period by officials holding office under the stigma, however unproven, of an allegedly "rigged" election. A copy of the "modification" order is hereto annexed as Exhibit E.

10. There is pending an appeal to this Court by defendants in the said cause of "Cunningham, *et al.* against English, *et al.*", primarily from those aspects of respondent's modification order that relate to the enlargement of the powers of the Board of Monitors. This Court has advanced the appeal for hearing on April 15, 1959. On March 31, 1959 this Court stayed the effectiveness of the respondent's modification order on condition that the International would not call a new convention for the election of officers until the determination of the appeal, but petitioners submit that the respondent's unauthorized assumption of jurisdiction, under the guise of modifying a consent decree, to frame a new decree abrogating the right of election of officers of their own choice under democratic safeguards, warrants direct attack independently of the question of the general "housecleaning" (Respondent's Memorandum Opinion, Exhibit D) and other alleged powers of the Board of Monitors.

11. It is petitioners' contention that the respondent's prohibition by decree of their choice of their representatives by 1,600,000 members of the International constitutes a patent denial of due process of law and that the respondent exceeded his jurisdiction by framing a new decree which prohibits the membership from holding such an election.

12. Petitioners invoke the jurisdiction of this Court under Title 28 of the United States Code, Section 1651, subsection (a), and under the inherent powers possessed by it to issue a writ of prohibition in aid of its appellate functions.

WHEREFORE, the petitioners pray that this Honorable Court shall enter an order herein commanding the respond-

ent, the Honorable F. Dickinson Letts, to refrain from interference with the right of the petitioners and all those similarly situated to hold a democratic election of officers and to vacate Paragraph 3 of his order of modification of the consent decree, which subjects the holding of a new election to the will of the Board of Monitors and of the respondent; and that the petitioners have such other and further relief as may be just in the premises.

Dated, April 8, 1959.

Respectfully submitted,

WILLIAM GOFFEN,
150 Broadway,
New York 38, N. Y.

ROBERT H. REITER,
Suite 601,
1311 G Street, N. W.
Washington 5, D. C.

Attorneys for Petitioners.

STATE OF FLORIDA,
COUNTY OF DADE, } ss.:

GENE SAN SOUCIE, being first duly sworn, deposes and says: that he has read the foregoing petition for writ of prohibition; that he knows the contents thereof and that the matters and things therein stated he verily believe to be true.

GENE SAN SOUCIE.

Subscribed and sworn to before me this 8th day of April, 1959.

MARIAN H. RICHMAN,
Notary Public, State of Florida at large.
My commission expires Nov. 18, 1960.
Bonded by American Surety Co. of N. Y.

Appendix I.

Opposition to "Order to Show Cause; Petition for Leave to File Petition for Writ of Prohibition; Petition for Writ of Prohibition; Memorandum in Support of Petition" and to "Motion to Set Petition for Hearing".

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,076

GENE SAN SOUCIE, *et al.*,
Petitioners,

v.

THE HONORABLE F. DICKINSON LETTS, Chief Judge of the United States District Court for the District of Columbia,
Respondent.

Comes now the respondent by his attorney, the United States Attorney, and opposes (1) the filing of the petition for prohibition and order to show cause and (2) the motion for a hearing on April 15, 1959.

The instant pleadings find their roots in complaints filed in the District Court in September and October, 1957, seeking to enjoin elected officers of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereafter "Teamsters") from assuming office on the ground that they had been illegally elected. (See appeals Nos. 14,141 and 14,201).

Following twenty-two days of trial in December, 1957, and January, 1958, a Consent Order was entered into by the parties which provided that the officers could assume

office but that a new election not be held for one year. The Consent Order also established a Board of Monitors, whose function was to take various steps which would insure the holding of a democratic election consistent with the Teamsters' constitution.

Subsequently, on February 9, 1959, the District Court, entered an order making certain modifications of the Consent Order, one of which postponed the holding of a future election. Attack upon the proposed modifications was made in this Court in the case of *Cunningham, et al.*, v. *Letts*, Appeals No. 14,889. In that case various Teamster members, who with but one exception were not parties to the main litigation, sought by way of mandamus or prohibition to enjoin entry of the proposed modifications. This Court, on February 6, 1959, denied both the petition for writ of mandamus and prohibition. In addition, these parties have an appeal pending (No. 15,033).

Shortly thereafter the order containing modifications was filed and an appeal duly noted therefrom by the defendants in the main action. See Appeal No. 14,983. Appellants in that case (defendants below) sought to enjoin the modifications pending outcome of the appeal. On March 3, 1959, this Court entered a stay of the modifications until April 15, 1959, the date set for oral argument of the appeal. The order recited that appellants had agreed not to call a convention until after the appeal was decided.

On April 3, 1959, a motion for leave to intervene in Appeal No. 14,983 (the appeal from the main action) was filed by the same persons who previously had unsuccessfully sought mandamus or prohibition (Appeal No. 14,889). That motion is now pending before the Court.

The instant petition was filed by persons entirely new to this series of cases. None of them are or were parties to the main action below, never having sought to intervene in that case. Nor have any of them sought to intervene in any of the appellate causes. Their petition for prohibition alleges that respondent was without power to modify the

Consent Order and therefore was without power to enjoin the holding of a new election. They ask this Court to prohibit respondent from interfering with the holding of a new election. No affidavits in support of allegations of irreparable injury have been filed, and in fact no allegations of irreparable injury have been made in any of the pleadings which have been filed. The petition was filed on April 10, 1959, and petitioners, in a separate motion, ask that a hearing be held on April 15, 1959.

ARGUMENT

1. *The petition is premature*

Petitioners ask the Court to prohibit respondent from interfering with a Teamster election. But at present ther are no plans to hold an election. The Teamsters themselves have agreed not to hold an election until after this Court disposes of the appeal in No. 14,983. And this Court has enjoined the modification order until April 15, 1959. Hence, there can be no justiciable case or controversy until after this Court disposes of No. 14,983. And, presumably, decision in that appeal will moot any issue raised here. The extraordinary remedy of prohibition should not be utilized to determine academic questions, and for this reason alone the petition should be denied. See *United States* v. *UAW-CIO*, 352 U. S. 567, 591-592 (1957).

2. *Appeal is available and has been utilized*

Prohibition is not a substitute for appeal, but is resorted to only where appeal is a clearly inadequate remedy. As an extraordinary remedy, it is reserved for "really extraordinary causes". *Ex parte Fahey*, 332 U. S. 258, 259-260 (1947). There is nothing extraordinary about this case. The precise issues raised are presently being considered in Nos. 14,983 and 15,033. Petitioners do not allege inadequate representations in these appeals. Nor do they

allege any irreparable injury. Moreover, they offer no explanation for their failure to seek intervention in the main action below or in the appeals here, nor do they make any effort to explain why they waited two months after the modification order was entered to seek appellate review of it.

3. *Petitioners have no standing to attack the order of modification.*

If petitioners wish to challenge the instant order they should have intervened below just as the non-parties did in the *Swift* litigation. See *United States* v. *Swift and Company*, 286 U. S. 106 (1932) and *Swift and Company* v. *United States*, 276 U. S. 311 (1928). This failure to do so is indicative of their lack of standing in this Court.

4. *The modifications ordered by respondent are valid*

In this connection respondent invites the Court's attention to the brief filed by the Board of Monitors in No. 14,983 and to the opposition of respondent filed in No. 14,889.

5. *Oral argument should not be allowed*

Because no genuine issues are raised, respondent opposes the motion to set the petition for hearing on April 15, 1959.

Respectfully submitted,

/s/ OLIVER GASCH
OLIVER GASCH,
United States Attorney.

/s/ CARL W. BELCHER
CARL W. BELCHER,
Assistant United States Attorney.

/s/ LOUIS M. KAPLAN
LOUIS M. KAPLAN,
Assistant United States Attorney.

Appendix I.

Certificate of Service.

I hereby certify that a copy of the foregoing Opposition has been mailed to attorneys for petitioners, William Goffen, Esquire, 150 Broadway, New York 38, N. Y., and Robert H. Reiter, Esquire, Suite 601, 1311 G Street, N. W., Washington 5, D. C., this 13th day of April, 1959.

/s/ LOUIS M. KAPLAN

LOUIS M. KAPLAN,
Assistant United States Attorney.

Appendix J.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

GENE SAN SOUCIE, Individually and as President of the INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA and as President of INDIANA LOCAL No. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, THE INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and LOCAL No. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioners,

against

THE HONORABLE F. DICKINSON LETTS, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA,

Respondent.

No. 15076/1959

Reply to Respondent's Opposition to Order to Show Cause; Petition for Leave to File Petition for Writ of Prohibition; Petition for Writ of Prohibition; and Memorandum in Support of Petition.

PRELIMINARY STATEMENT.

Preliminarily, respondent errs in construing the petition as an attack on his "power to modify the Consent Order". Actually, the petition is not concerned with the

respondent's power to "modify" a consent decree. It is concerned with his power to frame a new decree. The consent order permitted officers elected at an allegedly rigged election to hold office only provisionally until a new, free election was held after one year. Petitioners' sole contention is that the respondent clearly and indisputably exceeded his jurisdiction in framing a new decree which makes the civil right of petitioners and 1,600,000 union members similarly situated to a democratic election of their officers subordinate to the whim of monitors who have nothing to gain by a new election but release from their lucrative posts. Consent Order, Section 8, annexed to the Petition as Exhibit C.

Respondent's assertion that "no allegations of irreparable injury have been made in any of the pleadings" reflects a curious indifference to arbitrary denial of what has been characterized by the American Civil Liberties Union in its *Labor Union "Bill of Rights"* as "the ultimate and most important freedom in the democratic conduct and control of the group". Can there be a more emphatic plea of irreparable injury than the ninth paragraph of the sworn petition that "the 1,600,000 members of the International are placed in the humiliating position of representation for an indefinite period by officials holding office under the stigma, however unproven, of an allegedly 'rigged' election"? Does the respondent believe that this Court will disregard the extraordinary issue presented by his denial of due process of law to 1,600,000 people because "irreparable injury" was not redundantly claimed by supporting affidavits?

POINT I.

In Reply to Arguments "1" and "3".

Consistently with an approach that relies entirely upon technicalities while disregarding the issue, the respondent contends in his first argument that the "petition is prema-

ture" and, inconsistently, in his third argument that the petitioners have no standing because "they should have intervened below". Neither contention is meritorious.

That the International has agreed not to call a convention for a new election until determination of its pending appeal from all aspects of respondent's modification order of February 9, 1959 does not make moot the instant petition for an order restraining the respondent from making the right of petitioners to a new election dependent upon the will of the Board of Monitors. Regardless of stipulations by the International or the course of its appeal, the respondent's decree insofar as it prohibits a new election is in clear excess of his jurisdiction and should be promptly enjoined.

Ex Parte State of New York, 256 U. S. 490 (1920), discussed in petitioners' memorandum in support of petition at pages 6 and 7.

Argument "3", to the effect that the Court cannot act except where the petitioner has intervened below is not supported by the authorities.

73 C. J. S. Prohibition, page 13.

As stated in *Corpus Juris Secundum*, *supra*, an application for a writ of prohibition is an original suit.

State ex rel. Associated Utilities Corp. v. *Chillingworth*, 132 Fla. 587, 181 So. 346.
50 C. J., p. 656, note 46.

The petitioners, as in the instant case, may properly sue on behalf of others similarly situated.

Clark v. *Ardery*, 222 S. W. (2) 602

The writ is not strictly a proceeding to review a proceeding in a lower Court in its entirety and is not a continuation in a higher Court of the proceeding in the lower Court, but

is a new proceeding in the higher Court to determine whether the lower Court has exceeded its jurisdiction.

State v. *District Court*, 103 Mont. 485

At sec. 23b on page 100 of *Corpus Juris Secundum*, the general rule is stated that

> "... any interested person is a proper applicant in a prohibition proceeding. A person may be a proper party relator, although he is not a party to the proceeding challenged".

In short, any person, even a stranger to the suit, who will be affected by the proceeding which he seeks to prevent may apply for prohibition.

State of Missouri ex rel. Muth v. *Buzard*, 356 Mo. 1149, 205 S. W. (2) 538

POINT II.

In Reply to Argument "2".

Besides repeating the contention that petitioners do not allege irreparable injury, which has been replied to at Page 2, *supra*, the respondent in his Argument "2" urges that appeal is an adequate remedy. However, as pointed out by the Supreme Court in *In Re Parte State of New York*, *supra*, the existence of a possible remedy by appeal is not a valid objection to the issuance of prohibition. As for respondent's carping that two months have elapsed before the institution of petitioners' application, it need only be observed that democratic union procedures are slow and that the vote authorizing Petitioner Gene San Soucie as President of Local No. 13[illegible] to petition was not passed until April 5, 1959. Petition, sec. 3. The petition was served five days later. In any event, respondent does not contend that he was prejudiced by the lapse of time.

Appendix J.

POINT III.

In Reply to Argument "4".

Arguments by the Monitors that a democratic election cannot be held are unconvincing in view of the requirements of sec. 9 of the Consent Order (Exhibit C, annexed to the Petition) assuring strict compliance with the International Constitution in the election of delegates to the convention, the use of the secret ballot, supervision by the Honest Ballot Association, and the counsel of the Monitors. Can it be that the Monitors' unseemly opposition to a democratic election is motivated by their awareness that under sec. 8 of the Consent Order they would be released from their lucrative posts?

POINT IV.

Conclusion.

The respondent's clear want of jurisdiction to bar indefinitely 1,600,000 people from holding a free election of their officers, "the ultimate and most important freedom in the democratic conduct and control of the group", is so clear and indisputable that the writ of prohibition should issue promptly as prayed.

Respectfully submitted,

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GENE

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 194.

GENE SAN SOUCIE, Individually and as President of the Indiana Conference of Teamsters of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al., Petitioners

v.

THE HONORABLE F. DICKINSON LETTS, Judge of the United States District Court for the District of Columbia

---

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The *per curiam* order of the Court of Appeals for the District of Columbia Circuit (Pet. 11) denying petitioners' petition for leave to file a petition for a writ of prohibition is not reported.

JURISDICTION

The order of the court of appeals was entered on April 20, 1959 (Pet. 11). The petition for a writ of certiorari was filed on July 8, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 2101(e).

QUESTION PRESENTED

Whether, in the circumstances of this case, petitioners were entitled to the extraordinary writ of prohibition in the court below.

STATEMENT

Background. The instant proceeding results from litigation instituted in the District Court for the District of Columbia by thirteen members of various locals of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America against the International Union and several of its officials (Pet. 13-61). *Cunningham, et al.* v. *English, et al.*, Civil Action No. 2361-1957. In that case, which was brought as a class action, the plaintiffs sought, *inter alia*, to enjoin officials who had been elected at the September-October 1957 convention of the Teamsters from assuming office on the ground that they had been illegally elected (Pet. 58). After some three weeks of trial, a consent order was entered by Judge Letts on January 31, 1958 (Pet. 76-81; App., *infra*, pp. 30a-35a; see also the memorandum opinion of the district court (Pet. 82-92)). The consent order permitted the elected officials to take office, but also provided for the creation of a Board of Monitors, responsible to the court, whose general function would be "to insure the enforcement and protection of all rights of the individual members and the subordinate bodies"

of the Teamsters, as guaranteed by the Teamsters' constitution (Pet. 77; App., *infra*, p. 31a). Pertinent to the instant case, section 8 of the consent order provided in its second paragraph (Pet. 80; App., *infra*, pp. 33a-34a):

> A new convention and election of officers shall be held at any time after the expiration of one year from the date of this order when the General Executive Board by majority vote shall resolve to call such convention and hold such election. The Board of Monitors may recommend to the General Executive Board after the expiration of one year from the date of this order that a new convention and election be held. In all events such new convention and election of officers must be called and held within the time specified by the provisions of the constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as amended.

On February 9, 1959, Judge Letts made certain modifications of the consent order (Pet. 93-95; App., *infra*, pp. 36a-38a). Among other things, in paragraph 3 of his modification order, he ordered the first two sentences of the second paragraph of section 8 of the consent order be deleted, and the following provision be inserted in their place (Pet. 94; App., *infra*, p. 36a):

> "The time for the next convention shall be subject to recommendation by the Board of Monitors to the General Executive Board of the International Brotherhood, with the exact time of holding the convention being subject to the final approval of the Court."

Shortly thereafter, the defendants in that action took an appeal from the February 9, 1959, modifica-

tion order.[1] *English, et al.* v. *Cunningham, et al.* (C.A. D.C.), No. 14983. The opinion of the court of appeals in that case was entered on June 16, 1959 (App., *infra*, pp. 1a-42a), and the judgment, which had been deferred to allow the parties to reach an agreement as to form or to seek clarification (App., *infra*, p. 29a), was entered on July 9, 1959 (App., *infra*, pp. 47a-56a).[2] In essence, the court of appeals affirmed the February 9, 1959, order of Judge Letts, with certain critical modifications. Of pertinence here, the court ordered that section 8 of the consent order, as modified by paragraph 3 of the order of February 9, 1959, be further modified by deleting the first two sentences of the second paragraph of section 8 and by inserting the following provision in their place (App., *infra*, p. 53a):

> A new convention and election of officers shall be held at any time after the expiration of one year from the date of this order when the District Court shall determine that such convention and election be called and held. The plaintiffs, the defendants and the Monitors may make recommendations to the District Court as to the time when the next convention and election should be held;

---

[1] In addition, various members of the Teamsters, who, with only one exception, were not parties to the litigation, applied to the court of appeals for a writ of mandamus or prohibition to enjoin entry of the proposed modification. *Cunningham, et al.* v. *Letts* (C.A. D.C.), No. 14889. Their application was denied by the court of appeals on February 6, 1959.

[2] A supplemental opinion was also filed by the court of appeals on July 9, 1959 (App., *infra*, pp. 43a-46a). A motion by the appellants in that case for reconsideration and stay or, in the alternative, for stay pending petition for certiorari was denied by the court of appeals on July 15, 1959. An application for stay of the judgment of the Court of Appeals pending disposition of a petition for a writ of certiorari is now pending before Mr. Justice Frankfurter.

This litigation. While the appeal in *English, et al.* v. *Cunningham, et al.* was still pending, the petitioners in the instant case filed a petition in the court of appeals for leave to file a petition for a writ of prohibition against Judge Letts (Pet. 96-101). Alleging that Judge Letts was without power to enter the modification order of February 9, 1959, the petitioners sought an order from the court of appeals which would direct Judge Letts "to refrain from interference with the right of the petitioners and all those similarly situated to hold a democratic election of officers and to vacate Paragraph 3 of his order of modification of the consent decree * * *" (Pet. 101). In a *per curiam* order entered April 20, 1959, the court of appeals denied petitioners' leave to file the petition for a writ of prohibition (Pet. 11).

ARGUMENT

By application to the court of appeals for a writ of prohibition, the petitioners, who were not parties in *Cunningham, et al.* v. *English, et al.*, and indeed had not sought to intervene there, attempted to challenge the legality of Judge Letts' modification order of February 9, 1959, in *Cunningham, et al.* v. *English, et al.* Since the defendants in that litigation had already taken an appeal from the modification order, and, moreover, had raised identical issues, it was entirely appropriate for the court of appeals to refuse to grant petitioners the extreme remedy of prohibition which is properly reserved only for "really extraordinary causes." *Ex parte Fahey*, 332 U.S. 258, 260; see *Ex parte Peru*, 318 U.S. 578, 584.

Petitioners' contention that the extraordinary remedy of prohibition is justified in this case is based

in entirety on the claim that the district court and court of appeals have committed serious error interfering with their rights (Pet. 7, 10). Yet they do not even suggest that the defendants in the main litigation (*Cunningham, et al.* v. *English, et al.*), *i.e.*, the International Union and its highest officers, were or are unable or unwilling to protect the rights of the union and its members through appropriate appeals from the district court's decision. In fact, those defendants, having appealed the modification order to the Court of Appeals, are now preparing to ask this Court for certiorari (see *supra*, p. 4, fn. 2). Thus, petitioners' argument means in effect that prohibition is justified whenever a court commits error—thereby substituting a writ of prohibition for an appeal.

The propriety of the court of appeals' determination in refusing to substitute a collateral appeal by way of prohibition is underscored by that court's subsequent ruling on the authorized appeal from Judge Letts' modification order of February 9, 1959, by the defendants in that case. The court considered the specific modification to which petitioners principally objected in the court of appeals, *i.e.*, paragraph 3 of Judge Letts' modification order (which is also their only objection here (Pet. 1, 4-5)), and substantially revised it. The court of appeals held that, insofar as paragraph 3 of the modification order subjected the determination of the time for holding a Teamsters' convention to the initiative of the Monitors, it was in error. The court further held that, although the plaintiffs, defendants, and Monitors may recommend as to when the convention and election is to be held, the decision is solely that of the district court, "subject, as set forth in paragraph 8 of the consent decree, to the

provision that in all events the convention must be called and held within the time specified in the [Teamsters'] constitution" (App., *infra*, p. 12a; see also the order of the court of appeals (*supra*, p. 4)).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. Lee Rankin,
Solicitor General.

George Cochran Doub,
Assistant Attorney General.

Samuel D. Slade,
Seymour Farber,
Attorneys.

August 1959.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14983

JOHN F. ENGLISH, et al., APPELLANTS

v.

JOHN CUNNINGHAM, et al., APPELLEES

Appeal from the United States District Court for the District of Columbia

---

Decided June 10, 1959

Mr. Edward Bennett Williams, for appellants. *Mr. Raymond W. Bergan* also entered an appearance for appellants.

Mr. Godfrey P. Schmidt for appellees.

Mr. Martin F. O'Donoghue for Board of Monitors.

Mr. Raymond R. Dickey filed a brief on behalf of *Anthony Distinti, Robert J. Coar* and *William E. McKernan*, as *amici curiae*, urging reversal.

Before EDGERTON, WILBUR K. MILLER and FAHY, *Circuit Judges*.

FAHY, *Circuit Judge:* This is an appeal by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein referred to usually as the Teamsters, and by certain of their officers, usually referred to, with the Teamsters, as defendants. The litigation was initiated by thirteen members of locals of the Teamsters, to whom we shall

usually refer as plaintiffs.[1] They sued for themselves and on behalf of all other members.

The thrust of plaintiffs' original action, filed in September 1957, was th[illegible] under the 1952 constitution of the Teamsters[2] plaintiffs had certain legal rights and defendants certain legal obligations, and the rights were being denied and the obligations were being repudiated by defendants. The complaint alleged, *inter alia*, a conspiracy to "rig" the election or selection of delegates to a forthcoming national convention of the Teamsters to be held in Miami in September-October 1957, numerous violations of the constitution, including the misuse of union funds, the domination and disfranchisement of members, and the imposition of officers and leaders to prevent free elections, and to bring about the election of defendant James R. Hoffa as General President and of defendant Dave Beck as General President Emeritus. Other allegations include charges of raids on union treasuries, refusal of financial accounting, the keeping of inadequate financial records, and the engaging by officers in private business with union funds.

The complaint prayed the court to enjoin defendants from conducting the Miami convention or the election of any national officer unless those voting were properly elected or selected in accordance with the constitution, to enjoin violation by defendants of the constitution, and to appoint "a receiver or board of receivers, a master in equity or masters in equity," who would be authorized to establish pursuant to the constitution sound procedures for elections by the

[1] John Cunningham, one of the thirteen, is no longer entirely sympathetic with the positions of the other plaintiffs, but as a matter of convenience we refer to the plaintiffs as a group. The companion case of *Cunningham* v. *English*, decided this day, is an appeal by him alone.

[2] Unless otherwise indicated the word "constitution" means the constitution of the Teamsters.

members of local unions, to do these and kindred things expeditiously, and then to return the management of the affairs of the Teamsters to their General Officers duly elected "at such National Convention convened pursuant to the Order of this Court," and for other relief which need not now be specified.

The District Court, Judge Letts sitting, entered a preliminary injunction enjoining the holding of the Miami convention. This court stayed the injunction,[3] deeming it to go beyond the necessities of the situation and not required to prevent irreparable injury to plaintiffs. Our stay was without prejudice, however, to such relief as might properly be grantable after the election, and we provided that "all delegates recognized or seated by the credentials committee shall be selected in accordance with the requirements of the constitution. . . ."

The convention was held, new officers were elected, and a new constitution adopted, amending the 1952 constitution. Plaintiffs then amended their complaint to attack the proceedings at the convention, seeking to stay the effectuation of any of its acts. Another preliminary injunction was issued, this time, *inter alia*, enjoining James R. Hoffa, who had been elected at the convention as General President of the Teamsters, and others there elected to office in the Teamsters, from taking office, from applying any decision, practice, usage or policy and expending any monies of the Teamsters' funds in violation of the 1952 constitution. This court modified but did not stay this injunction.[4]

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[3] Chief Justice Warren, Circuit Justice, on October 1, 1957, declined to grant relief from our stay order.

[4] That portion of the District Court's injunction which restrained the Teamsters from applying any decision, practice, usage or policy in violation of the 1952 constitution or expending Teamsters' funds in violation thereof was vacated and we substituted therefor a provision that the affairs of the Teamsters would be governed by the 1952 constitution and no amendments adopted at the convention would be put in effect during the pendency of the injunction.

The case then went to trial before Judge Letts. After some three weeks of trial a consent decree was entered, January 31, 1958, and the preliminary injunction last referred to was dissolved. A copy of the body of the consent decree is set forth as Appendix A to this opinion.[5]

On February 9, 1959, the consent decree was construed and modified, but without the consent of the defendants. It is from this decree, a copy of which is set forth as Appendix B to this opinion, that the instant appeal is taken. We stayed this decree to enable its validity to be determined prior to the necessity of compliance.[6] Judge Miller dissented from our stay order.

1. *The Consent Decree.* We consider first the validity of the consent decree, because it is the foundation of the decree of February 9. Except as we shall specify with respect to paragraph 14 we hold the consent decree to be valid. It responds to justiciable issues which were being tried, involving the rights of members and the duties of officers of a labor organization under its constitution. The plan consented to for the solution of the issues was within the competence of the court to approve, and neither defendants nor plaintiffs urge the contrary.[7]

In upholding the consent decree we refer particularly at this point to the creation of a Board of Monitors to assist the court and the parties in carry-

[5] It is entitled Consent Order. But, for convenience and uniformity with other terminology we shall refer to it as the consent decree.

[6] At the same time we expedited the hearing of the appeal.

[7] In the companion case, see note 1, *supra*, we consider separately the particular question raised by one of the original plaintiffs against the validity of the consent decree under Rule 23 Fed. R. Civ. P. The Monitors also at one stage of the litigation seem to have entertained doubts due to noncompliance with this Rule, but they do not now press them.

ing out the decree.[8] This was responsive to the nature of the case and to the prayers of the complaint. As previously noted plaintiffs asked for masters in equity, but both court and parties preferred the court appointees to be called Monitors. No untoward legal significance attaches to the designation; and the court could use a board of this character to assist in bringing the litigation to a solution consistently with the rights and duties of the parties. The court thus exercised its powers to cope with a complicated situation affecting 1,500,000 union members. The latitude available to a court of equity in adapting its relief to the exigencies of a case is broad. *Virginian Ry. Co.* v. *Federation*, 300 U.S. 515, 552; and see *Green* v. *Obergfell*, 73 App. D.C. 298, 307, 121 F.2d 46, 55, *cert. denied*, 314 U.S. 637; *Alexander* v. *Hillman*, 296 U.S. 222, 239; *Union Pacific Ry. Co.* v. *Chicago, Milwaukee & St. Paul Ry. Co.*, 163 U.S. 564, 600-01; *Ball* v. *Victor Adding Machine Co.*, 236 F.2d 170, 174-75 (5th Cir. 1956); *Bowen* v. *Hockley*, 71 F.2d 781, 786 (4th Cir. 1934); *Pomeroy's Equity Jurisprudence*, §§ 60, 109, 111 (5th Ed. 1941). The validity of specific authority conferred upon or exercised by the Monitors pursuant to the consent decree we consider later in this opinion.[9]

We refer now also to paragraph 14 of the consent decree, under which the defendants are required to pay the fees of counsel for plaintiffs and the expenses incurred in the prosecution of the action, both as determined by the District Court. There can be no question we think as to the validity of the provision with respect to expenses, including compensation to

[8] We speak of the Monitors or the Board of Monitors as acting when often a majority did so. In some important respects Mr. Wells, the Monitor nominated by the Teamsters, did not join in their action.

[9] We interpolate that the Monitors are not parties to this appeal. We have, however, considered the briefs they have filed with us.

the Monitors. As to the provision with respect to fees of counsel, we deal with this in our decision of this day in the companion case of *Cunningham* v. *English*.

2. *Events intervening between the consent decree of January 31, 1958, and the decree of February 9, 1959.* The Monitors came into being as a Board on February 4, 1958, with Honorable Nathan Cayton as Chairman. Mr. Hoffa and other General Officers elected at the Miami convention took office provisionally, subject to the terms of the consent decree. In a letter to Judge Letts on May 13, 1958, Chairman Cayton stated that the Monitors had functioned well and successfully in furthering the objectives of the decree, with the "enlightened cooperation" of the International Union.[10] Judge Cayton resigned and was succeeded by Martin F. O'Donoghue, Esquire, as Chairman of the Board of Monitors. Disagreements thereafter arose. One cause may be traced to a change by the Monitors in their methods of operation, including the issuance of written "Orders of Recommendation." While many of these were complied with, the defendants disputed others on various grounds. Ensuing controversies led the Monitors on September 17, 1958, to file with the District Court a petition for the construction, reformation and or modification of the consent decree, and for other relief. They alleged that their "status and authority" had been questioned by the defendants "on the basis that the powers of the Monitors are merely advisory and recommendatory." They alleged failure of full compliance with several of their Orders of Recommendation and said the Teamsters' General Executive Board had violated the consent decree in several respects. They pointed out that the provisions of the decree regarding the holding of a new convention and election were basic objectives, to the end that de jure officers might be elected. They

[10] Judge Cayton's letter was attached as Exhibit 1, p. 43, to the Initial Report of the Board of Monitors.

further alleged that notwithstanding conditions were not ripe for a new convention and election they were advised a convention was proposed for February 1959. They also alleged that Price Waterhouse & Company[11] had reported that it was essential to good auditing that better record keeping be established in the International office. The Monitors then stated that the proposed convention should be held only after modern auditing and reporting procedures had been established, to ensure a truly democratic expression of the views of the membership. On September 30, 1958, Godfrey P. Schmidt, Esquire,[12] on behalf of plaintiffs filed a petition along the same general lines.

A hearing on the petitions was held by Judge Letts in November 1958. The court found bad faith on the part of defendants in not fully carrying out the consent decree, and entered the decree of February 9, 1959. The defendants dispute the findings of bad faith, claiming good faith differences of opinion about both the methods and powers of the Monitors, as well as the unsoundness of some of the Orders of Recommendation on constitutional and other grounds.

We think it unnecessary to resolve the question of bad faith or to pass upon the accuracy of the 129 findings of fact, some quite lengthy, submitted by the Monitors and adopted without change by the court. Otherwise we would be obliged to analyze and pass judgment upon each disputed charge and finding. We are able to determine the issues on appeal upon con-

[11] In April 1958, the Monitors, recognizing their need of competent professional advice with respect to review and recommendation for establishment of proper accounting and financial methods of control as provided in the consent decree, see Appendix A, paragraph 5, engaged the accounting firm of Price Waterhouse & Co. to make a preliminary survey of Teamster financial procedures and to advise the Monitors as to necessary changes.

[12] Mr. Schmidt is one of the Monitors and one of the attorneys for plaintiffs.

siderations other than the issue of bad faith, and aside from the accuracy of all but a few of the findings.

3. *The powers of the Monitors.* Defendants urge that the decree of February 9, 1959, invalidly transforms the powers of the Monitors from those of an advisory, consultative, and recommendatory character to those of command. Yet both the plaintiffs and the Monitors concede that the Monitors cannot command.[13] This tends to dispel whatever misunderstanding may have existed, due in part no doubt to the method by which the Monitors functioned and spoke at times. That they do not have the power to command, as they and the plaintiffs now concede, is clear from the terms of the consent decree, Appendix A. But, it is equally clear that that decree imposes definite obligations upon the defendants. We summarize these obligations in Appendix C, and we also set out in summary form in Appendix D the functions of the Monitors under the terms of the consent decree. The Monitors may make recommendations to the defendants in areas where the defendants have substantive obligations under the consent decree. These recommendations may be in writing if desired. Preferably they should be issued only after consultation and accompanied with efforts to obtain compliance.[14] If the Monitors are advised that defendants fail to comply in any significant respect with their obligations under the consent decree, the Monitors may so

[13] Thus, plaintiffs state to this court that the Monitors "never claimed or exercised 'mandatory' powers, at all times they knew they were possessed of only *advisory* or recommendatory powers." And the Monitors tell us in their brief that they are "only an advisory and reporting body."

[14] Since the only valid "orders" are those of the court, the terminology "Orders of Recommendation" used by the Monitors should be abandoned. While this has more to do with method than with substance, it is obvious that the method by which the Monitors function is important.

report to the court. They are required to report at least semi-annually and of course may do so oftener, for this duty is not to be construed narrowly. The court itself, after due opportunity for defendants to be heard, may issue orders within the scope of the consent decree, validly modified as hereinafter explained. We emphasize that action of the court must rest upon its decrees, not upon the Monitors' recommendations as such, and is to be embodied in an order of the court, not conveyed by reference to a separate instrument.[15]

4. *Validity of the decree of February 9, 1959.* As to this decree the principal question is whether it is valid at all. Though founded on the consent decree, it was not itself consented to. In appropriate circumstances a court may modify a consent decree without the consent of the parties. This is not contested here. The applicable principles are set forth by the Supreme Court in *United States* v. *Swift & Co.*, 286 U.S. 106, where it is said,

> The distinction is between restraints that give protection to rights fully accrued upon facts so nearly permanent as to be substantially impervious to change, and those that involve the supervision of changing conduct or conditions and are thus provisional and tentative. . . . The result is all one whether the decree has been entered after litigation or by consent. . . . In either event, a court does not abdicate its powers to revoke or modify its mandate if satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong. . . . The consent is to be read as directed toward

[15] An illustration of the necessity for this—but not the only justification therefor—is that recommendations of the Monitors, judging by experience, often called for action within certain time schedules impossible to meet when the court approved the recommendation.

> events as they then were. It was not an abandonment of the right to exact revision in the future, if revision should become necessary in adaptation to events to be.

286 U.S. at 114-15. See, also, *Coca-Cola Co. v. Standard Bottling Co.*, 138 F.2d 788 (10th Cir. 1943).

Defendants read these principles to prevent modification of this consent decree. In this we think they are mistaken. As they say, the plaintiffs attacked the legality of the 1957 elections, and sought a declaration of their invalidity and the calling of new elections under judicial supervision. But it does not follow, as defendants contend, that the members' right to constitutional elections was "fully accrued," except in the very abstract sense that the right existed. The ability to attain it did not. Nor were the facts upon which the case turned "nearly permanent" and "substantially impervious to change." The consent decree clearly contemplated change which would lead toward new and valid elections. If this basic goal of the parties could not be reached in the time originally contemplated, an extension of time could validly be made by the court under the *Swift* principles. There was here "the supervision of changing conduct or conditions. . . ." 286 U.S. at 114.

It is important to remember that defendant Hoffa and other General Officers of the Teamsters have been held in office under the consent decree. Though this has been provisional, they have been permitted to be and to remain in general charge of the affairs of the Teamsters. This concession to defendants was counterbalanced in the consent decree by their acceptance of obligations to bring about a situation in which new elections of a de jure and non-provisional character could be held, consistently with the legal rights of plaintiffs and those for whom they act. We realize the desirability of early transition from court supervision to normal organizational

management, but the District Court is not required by law, or by the consent decree, to step aside until conditions advance to a point which gives reasonable assurance of new elections in accord with membership rights under the Teamsters' constitution. If defendants' obligations are not yet fulfilled we think the time for doing so may be enlarged.[16]

Thus far we hold (1) the consent decree is valid, (2) it gives the Monitors no mandatory power, (3) except as to drafting of proposed by-laws their powers are recommendatory, consultative, and advisory, but (4) they are authorized to report from time to time to the court with respect to compliance with the consent decree itself, and (5) the consent decree is not immune from modification with respect to the time for bringing about compliance with its primary obligations.

5. *Further consideration of the decree of February 9, 1959.* We consider now, insofar as necessary, other details of the decree of February 9, first those related directly to a new convention, namely, paragraphs 3, 4 and 5.

Paragraph 3. In providing that the time for the convention shall be subject to recommendation by the Board of Monitors to the General Executive Board of the Teamsters, the exact time being subject to final approval of the court, paragraph 3 subjects the court's determination of the time to the initiative of the Monitors. This much is error. The court must retain control, though the Monitors, as well as the defendants and the plaintiffs, may recommend. The

[16] We do not need, therefore, to resolve the dispute as to whether or not the consent decree, see paragraph 8, Appendix A, left the time for the calling of the new convention to await a recommendation of the Monitors. We incline to think it did not; but, even if, as defendants urge, new elections and a new convention were to be held at any time the defendants might choose after a year, the court had power in the circumstances to extend the time.

decision is that of the court, subject, as set forth in paragraph 8 of the consent decree, to the provision that in all events the convention must be called and held within the time specified in the constitution.

Paragraph 4. The District Court here ruled that the convention call for September 16, 1958, was null and void. This is now moot and is set aside for that reason. *Paragraph 5*, which refers to March 15-19, 1959, is in the same category. Defendants have consented to postponement of the convention during the pendency of this appeal.

Paragraph 2. This orders defendant officers and the International to cooperate and assist the Monitors in accomplishing the basic purposes of the consent decree. We understand this portion of the paragraph is not questioned. The paragraph then provides, however, that in fulfilling this obligation,

> the Defendant provisional officers and the Defendant International shall comply promptly and fully with all future Board of Monitors' Orders of Recommendation that are reasonable and relevant to the basic purposes of the Consent Decree.

This provision, which is questioned, we set aside for the simple reason that defendants may not, by this general court order, be placed under obligation to comply with future Monitors' recommendations the terms of which are not known. Violation, if it occurs, must be in respect of specific court orders. This is basic to correct judicial administration. Rule 65 (d) Fed. R. Civ. P. provides that injunctions "shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. . . ." See also *Hartford-Empire Co.* v. *United States*, 323 U.S. 386, 410, as to the necessity of avoiding vagueness in court decrees. The recent decision of

the Supreme Court in *Scull* v. *Virginia*, — U.S. — (May 4, 1959), is illustrative of the need for definiteness in contempt cases.

In this connection and in order to clarify the relationship of the court-appointed Monitors to these proceedings, we state again how the Monitors are to function. They may make recommendations, in writing if desired, in those areas where the defendants have substantive obligations under the consent decree as validly modified. If the defendants fail to comply in any significant respect with these obligations, whether or not the subject of a recommendation, the Monitors may report this fact to the court. The court, after affording a hearing to the defendants, may order the defendants to take any necessary action within the scope of its decrees. These court orders hereafter must themselves provide what the defendants are to do, not simply refer to previous or future recommendations.[17]

Paragraphs 6 and 7. These are concerned with the eligibility of members for election to office, insofar as payment of dues is concerned under a union "check-off" system. Under Article II, section 4 of the 1952 constitution a member to be eligible for election must be in "good standing." Article X, section 5(c) of the 1952 constitution conditions membership in good standing upon a member paying dues to local unions on or before the first business day of each month. This was interpreted by defendants to require the timely receipt of the dues by the union even when checked off by the employer. The court, in conclusion of law No. 16, held the checking-off employer to be the agent of the union, thus taking the position that the employee involved would be in "good standing" even though the union was not in timely receipt of the dues, and in paragraph 6 of the February 9th decree ordered defendants so to interpret the constitution.

[17] See footnote 15, *supra*.

A 1957 amendment to Article X, section 5(c) provides that where dues are checked off it shall be the obligation of the member to pay one month's dues in advance but thereafter he remains in good standing for each consecutive month for which the check-off is made. This amendment seems to us adequately to meet the District Court's view as to the proper interpretation of the 1952 provision, and to solve the problem.[18] *Paragraph 7* requires defendants to give the membership at least three months' notice of the effective date of this 1957 amendment. A schedule of dates is set forth which, due to our stay, cannot now be met. If notice is still desired, notwithstanding our above conclusion, counsel for the parties, and the Monitors, are requested to seek agreement, failing which they may submit to the District Court their respective suggestions.

Paragraph 8. On September 29, 1958, the defendants filed a motion for the removal of Mr. Godfrey P. Schmidt as Monitor, to which Mr. Schmidt filed detailed answers, including supporting affidavits. Paragraph 8 requires defendants to cause to be read at all February 1959 local union meetings, and published in the February issue of *The International Teamster* a notice that the court has found that the defendants have presented no evidence to support their motion to disqualify and remove Mr. Schmidt as a Monitor, and that the motion was wholly without merit. The court found (Finding of Fact No. 129) that no evidence supported defendants' contentions, that seven of the eight unsworn charges against him

[18] We add, however, that while paragraph 6 orders defendants to adopt and apply the interpretation of the 1957 amendment as set forth in conclusions of law No. 16 and No. 17, we are unable to find the court's interpretation therein, and leave this open for consideration by the District Court if any question of interpretation persists.

were withdrawn, that "the remaining charge of 'conflict of interest,' although pressed by Defendants, was and is unproved on the record," and that all charges were in all respects unproved.

We accept these findings other than the one as to conflict of interest. The undisputed facts are that during the time Mr. Schmidt has been a Monitor he has represented Producers Distributors Associates, an employer, in arbitration proceedings in New York involving Teamster Local 816, including conferences with the Secretary-Treasurer of the local in New York; that a member of the office of Mr. Schmidt appeared before the National Labor Relations Board on behalf of Howard Johnson Restaurants in connection with decertification proceedings involving this same local; that he represented the Schraffts Restaurant chain in New York and in connection therewith assisted to some degree in passing upon a contract between Teamsters' Local 816 and a trucker company who is the commissary carrier for Schraffts, and had conferences on the contract with the Secretary-Treasurer of the local; that his firm represented the Coin Service Company of New Jersey in negotiations of the company looking toward a contract with Local 575, a Teamster local in New York, and also represented the Independent Sanitation Owners Group of New York in contractual negotiations with Teamsters' Local 813. There is no suggestion by us that in any of these matters, or otherwise, Mr. Schmidt has not conducted himself lawfully, in good conscience, and openly; but we believe conflict of interest exists nonetheless. His private employment in negotiating with Teamster locals on behalf of employers tends potentially—and that is all that is necessary to create conflict of interest—to condition the exercise of his public responsibility as an officer of the court. Obvious, too, is the potential pressure upon Teamster locals in negotiating terms of employment with one who while representing the bargaining employer is a

Monitor who possesses great influence in the affairs of the Teamsters.

Since, however, Mr. Schmidt is an officer of the District Court, we simply state our disagreement with the finding that no conflict of interest was shown. Whether the conflict of interest which was shown disqualifies him as a Monitor is a matter to be determined initially by the appointing court in the exercise of a sound discretion on our remand of the case.

The time specified in paragraph 8 for publishing that the charges against Mr. Schmidt were unproved has long since passed. Nevertheless, if the defendants published any of the charges against him they should with equal distribution publish now that the charges were found to be unproved, except that conflict of interest was proved and that the question whether this conflict of interest disqualifies Mr. Schmidt is as yet unresolved. If counsel for the parties cannot agree as to how this publication shall be phrased or published, either or both may resort to the District Court for a decision. If, however, the defendants did not publish the charges no countervailing publication is required. Moreover, we are pointed to no evidence of publication at the local union level which requires an offsetting notice to be read to the locals.

We have not overlooked the suggestion of Mr. Schmidt that his situation is no different in essence from that of Monitor Wells. But we have no question before us as to Monitor Wells. None has been presented to the courts and no hearing had with respect to him.

Paragraph 1. This provision, which we consider last because of its nature, orders defendant provisional officers and the Teamsters to comply promptly and fully with the Board of Monitors' Orders of Recommendation No. 4, No. 11, No. 12, No. 14, No. 16, No. 17, No. 18, No. 19, No. 20, No. 21 and No. 23, and the

Supplemental Orders to No. 16 and No. 19. We have been obliged to consider each of these Orders of Recommendation upon their merits, notwithstanding that their blanket approval by reference does not accord with the procedure hereafter to be followed. We pass upon their validity by determining whether or not they are within the obligations assumed in the consent decree.

Order of Recommendation No. 4. Charges had been filed with the Monitors by a rank and file committee against certain officers of Local 107 located at Philadelphia, based upon testimony adduced before the Senate Select Committee on Improper Activities in the Labor or Management Field. After discussing the matter with the General Counsel of the Teamsters the Monitors recommended that he take up with General President Hoffa the filing of charges against the local to take it under trusteeship pursuant to Article VI, section 5 of the constitution, that a panel to hear the question consist of one International vice president, one disinterested member of the International in the area, and a public member. The Order of Recommendation recites agreement that Price Waterhouse would be authorized to audit and review the books of the local and the auditing work sheets of the Senate Select Committee so as to examine for presentation to the panel the evidence that the committee had. It provided also that the International immediately notify the bonding company covering the officers of Local 107 in view of the disclosures made by the Senate Select Committee.

Price Waterhouse made an audit and filed its report with the Monitors in September 1958. This was forwarded to General President Hoffa and General Counsel Williams with the request that the charges be filed and a hearing conducted.

We are confronted in this court with a controversy between the parties as to the good faith of the defend-

ants. They claim that full compliance with the recommendations was not possible because an injunction was obtained in a state court of Pennsylvania prohibiting the hearing by the panel. The Monitors contend the injunction would not have been obtained if defendants had proceeded in good faith to carry out the recommendations. As previously pointed out, we sustain the power of the court to modify, and, therefore, to interpret, the consent decree aside from the question of good faith.

We uphold the validity of court approval of recommendation No. 4 under paragraph 5 of the consent decree. To the extent that the substance of the recommendation has not been fulfilled defendants are obligated in good faith to do so except as they may be under order of a court of competent jurisdiction to the contrary. In that event they should make a good faith effort to obtain modification or dissolution of the injunction consistently with the rights of the parties, or, in the alternative, should institute promptly new proceedings to carry out recommendation No. 4 in a manner designed to avoid legal questions which might lead to court action to bar such proceedings.

Order of Recommendation No. 11. This involves election procedures of Local No. 245, in Springfield, Missouri. It recommends postponement of an election and a two-year audit of books and records of the local. The record indicates the recommendation has been complied with except as to the audit. The local has refused the advice of General President Hoffa to permit an audit by Price Waterhouse. We think the power of General President Hoffa under Article X, section 11 of the constitution over a trusteed local, such as No. 245, requires him to insist that the audit be conducted notwithstanding the reluctance of the local. If this power is not exercised, the problem should be presented for further consideration by the District Court.

Order of Recommendation No. 12. This recommendation recites that John J. McNamara, President of Local No. 295 in New York City, and Secretary Treasurer of Local 808, also in New York City, has been convicted of extortion. The Board recommends that he be requested by General President Hoffa to take leave of absence from these offices until his appeal has been decided and that Price Waterhouse be authorized to make a one-year audit of the books and finances of Local 808. We believe this recommendation finds basis in paragraph 5 of the consent decree, which provides for the establishment of accounting and financial methods, procedures and controls affecting funds of the Teamsters and its subordinate bodies. The General President complied with the recommendation by requesting McNamara to take leave of absence and requesting the local to permit the audit. It appears, however, that these requests have not been complied with. Without ruling generally on the use by the General President of his coercive powers under the constitution it is our opinion that in the circumstances of this particular situation, if the local's refusal has persisted, the General President should exercise his full constitutional power to bring about compliance.

Order of Recommendation No. 11. The subject of this recommendation is a report made by Price Waterhouse with respect to preliminary observations of Teamster financial records. The Monitors desired to have the defendants place the report on the agenda of a meeting of the General Executive Board, so that representatives of the auditing firm and the Monitors might discuss the report with the Board. The matter is important. It is concerned with the establishment of records of good standing of members of local unions, and with record-keeping essential to auditing and other fiscal purposes of both the Teamsters and locals. Though not complied with at the time of the

hearing in the District Court, counsel for the defendants then stipulated that the recommendation would be accepted. The authority of the court to order compliance is found in paragraph 5 of the consent decree.

Order of Recommendation No. 16 and Supplemental Order No. 16. These grew out of testimony before the Senate Select Committee on August 6 and 7, 1958, on the basis of which the Monitors felt justified in recommending an investigation of Seventh Vice President Owen B. Brennan for alleged misuse of the Michigan Conference of Teamsters Welfare Fund by making weekly payments therefrom to a boxer whom Mr. Brennan was managing. The payments were sought to be sustained, the record indicates, on the theory that the boxer was an investigator for the fund. We find authority of the court to require this matter to be investigated in paragraph 5 of the consent decree, relating to the establishment of controls affecting funds of the Teamsters and its subsidiary bodies and providing further that all persons having custody and management thereof shall be required to adhere to recognized legal standards and obligations imposed upon fiduciaries. But since Order of Recommendation No. 16 required certain action to be taken in August 1958 the date is obviously no longer applicable and was not applicable when the decree of February 9, 1959, was entered.[19] Proceedings should be instituted forthwith in accordance with the provisions of the union constitution for investigation and disciplinary action, to the extent that this has not already been done. No reason is advanced why the procedures for conducting such a hearing adopted by the Board of Monitors during Judge Cayton's chairmanship, set forth in

[19] This illustrates again a reason why any action required of the defendants in the future should be incorporated in an order of the court rather than by court approval of a previously issued recommendation of the Monitors.

the memorandum of Monitor Wells concerning Orders of Recommendation Nos. 16 and 17, should not be followed, with the exception that since some of the charges refer to possible association between defendant Hoffa and Mr. Brennan, independent counsel should advise the charging party, as requested by the Monitors. We find no constitutional provision to preclude this, though there is a provision requiring that only a member represent an accused member. The choice of independent counsel should be in consultation with the Monitors and need not be limited to the three persons they have recommended.

It appears that whereas this Order of Recommendation directed that Price Waterhouse audit the records of the Michigan Conference Welfare Fund for the period when the payments are alleged to have been made, the defendants do not have exclusive jurisdiction over such a matter and the Conference itself opposed the audit. Nevertheless, defendants should exercise their full constitutional authority to have those in charge of the fund consent to the audit. If unsuccessful, independent proceedings within the jurisdiction where the local is situated might be required.

Order of Recommendation No. 17. This Order of Recommendation is based again on testimony before the Senate Select Committee which indicates that Mr. Feldman, a business agent for Local 929 in Philadelphia, allegedly offered to settle a labor dispute between various locals and an employer for a reported $50,000. The Monitors recommended that charges should be filed against Feldman, a hearing conducted, suspension from office ordered, and that an allegation before the Senate Select Committee to the effect that Feldman was organizing an independant union of the employees of a restaurant chain be investigated. We think the subject matter of this Order of Recommendation finds support in paragraph 5 of the consent decree.

We are advised that the defendants at the time of

the hearing below had begun compliance by bringing charges against Mr. Feldman, suspending him, and initiating his trial on the charges. These procedures should be concluded if this has not yet been done.

With respect to that portion of the recommendation which calls for an investigation into Mr. Feldman's activities in the organization of an independent union of the employees of the Dewey restaurant chain in Philadelphia, we think it also finds support in paragraph 5 of the consent decree and, therefore, should be complied with.

Order of Recommendation No. 18. This requires that the General President publish in *The International Teamster*, beginning with the September 1958 issue, all Orders of Recommendation beginning with No. 15, and that a 500 to 1,000 word report of the activities of the Board of Monitors, to be prepared by them, be published in each issue. Here again the date has long since passed for initial compliance, and in any event we disapprove the requirement that Orders of Recommendation be published. The court in the exercise of a sound discretion may require publication of its own orders, and in the interest of keeping the membership advised of the progress of the case we substitute for the publication of all recommendations a requirement that the Monitors prepare in consultation with counsel for defendants a summary of previous Orders of Recommendation which have been consented to, or have been approved by the District Court and by this court, together with a statement of the course of the Monitorship, which, when approved by the District Court, shall be published in *The International Teamster*.[20] If future reports of the activities of the Monitors are to be published in union periodicals, they should be the product as far as possible of consultation by the Monitors with defendants. After ap-

[20] In the event the contents of such a summary cannot be agreed upon as we suggest, the District Court shall resolve the differences.

proval by the court if disagreement arises, the reports, should be published at intervals mutually agreed, or, in the absence of agreement, as the District Court shall decide.

Order of Recommendation No. 19 and Supplemental Order No. 19. This recommendation involves alleged use of the funds of Local 515 of Chattanooga, Tennessee, by Glenn W. Smith, President of the local, to "fix" a criminal case involving officers and members of a Teamsters' local. The recommendation was in substance that the General President (1) exercise the powers conferred upon him under Article XVIII, section 10 of the constitution and file charges by August 25, 1958, for expulsion of Smith and H. L. Boling who allegedly participated in the "fix," for misappropriating union funds, violating their oath of office, engaging in conduct unbecoming a member or officer, tending to bring the union into disrepute and violating sound trade union principles; (2) that the General President investigate the acquisition of the sum of $13,500 by the local from the Southern Conference of Teamsters during June 1951, and take appropriate action if investigation produces evidence of wrongdoing; (3) that he instruct Price Waterhouse to audit the books of the local covering the period involving the alleged payment from union funds to fix the criminal case; and (4) that Smith and Boling be immediately suspended.[21]

Supplemental Order No. 19, dated August 22, 1958, recommends that the General President assume original jurisdiction over the charges against Smith and Boling

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[21] Monitor Wells dissented from the recommendation of immediate suspension without a hearing or opportunity to defend and to the majority's factual recitals. He stated that charges had been filed within the local union and were scheduled for prompt hearing. He also protested the failure of the majority to follow procedure required by court order "and our published procedures," urging processing of properly filed charges as provided in the constitution, without prejudgment.

by 5 p.m. that day and by that hour also notify the local. Monitor Wells protested the issuance of this recommendation at the direction of the Chairman without a meeting or conference with the other Monitors, again insisting on proper procedure.

It appears that prior to the hearing in the District Court General President Hoffa did assume original jurisdiction and order pretrial suspension of Smith and Boling and that their trial had been held. The result does not appear. The Monitors in their brief state they have been informed that Smith and Boling were never actually suspended, but that Smith took leave of absence after being convicted by a federal court of income tax evasion, while Boling is still in charge of the local.

We approve the District Court's requirements of an audit and investigation as within its authority under paragraph 5 of the consent decree. We approve also, as authorized by the same provision, the general thrust of the court's approval of this recommendation and supplement thereto, and we observe that in light of the statements of the Monitors in their brief, above referred to, it might be necessary for the District Court to enlist the constitutional authority of the General Officers of the Teamsters, under Article X, section 11(a) and Article XVIII, section 13(c). If these provisions are not adequate to bring a remedy to a situation where either a local or an officer of a local refuses to comply with an order of the General President, such other steps as the parties and the Monitors may suggest to the District Court as within its authority may be considered.

Again we point out, that when the court takes action on the basis of a recommendation by the Monitors it should incorporate in its own order what is to be done and not simply approve a previously issued recommendation incorporated by reference. We point out also that the Monitors must use procedures which afford

opportunity for all three Monitors to participate. Each has responsibilities as an officer of the court.

Order of Recommendation No. 20: This recommendation is dated August 19, 1958. It recommends to General President Hoffa (1) the promulgation by August 27, 1958, for adoption by all locals of "Rules for the Conduct of Local Union Nomination Meetings and Election of Officers," and (2) that by September 15, 1958, the Executive Boards of all local unions, including trusteed locals, adopt these rules in accordance with Article XXI, section 5 of the constitution. This recommendation states that it was the intention of the Monitors that these rules would remain temporarily in effect until they could recommend the adoption of model provisions for inclusion in local union by-laws. It also recommends that the General President by August 27, 1958, appoint a committee to confer with the Monitors and their staff concerning these rules and model provisions.

General President Hoffa advised the Monitors in response that he could not promulgate the attached rules because in his view some were in violation of the constitution and others were unworkable. The Monitors met with the General Executive Board September 16, 1958, and discussed the rules, after which they were redrafted and resubmitted under date of October 24, 1958.

Some elections were held in the fall of 1958 without adoption of the suggested rules and we do not understand that the Monitors now seek to cancel the results of such elections but only to sustain the charge of defendants' "bad faith" in failing to adopt the proposed rules in time to govern the elections. Since we are deciding the validity of the consent decree and its modification of February 9, 1959, including the validity of recommendations as enforced by the court, without passing upon the issue of bad faith, there seems nothing left to do about this particular recommendation

insofar as past events are concerned. But there will be future elections and the consent decree imposes definite obligations on both defendants and Monitors with respect thereto. Under paragraph 4 of the consent decree the Monitors must draft a model code of local union by-laws or model provisions for inclusion therein. Undoubtedly some of these will govern election procedures which will be recommended for adoption by local unions. And paragraph 3 of the consent decree requires defendants to see that elections are conducted in a manner to afford members certain rights guaranteed by the constitution, particularly "the right to honest advertised elections" and "the right to fair and uniform qualifications to stand for office." Further discussions between the Monitors and the defendants should be had as a means of securing the adoption by the locals of rules under which these obligations can be fulfilled. As presently appears, therefore, further court action may wait a reasonable time for these discussions.

Order of Recommendation No. 21. This recommendation recites that the Monitors had made a thorough study of information regarding a merger of Local No. 183, Fairbanks, Alaska, with Local No. 959, Anchorage, Alaska, and sets forth particulars from which it was concluded that the merger was brought about invalidly and therefore should be set aside. The recommendation is that by a specified time schedule, beginning in September 1958 and ending in January 1959, the merger should be dissolved, the locals restored to separate status, trusteeship reinstated as to Local 183 pending local elections, a new trustee named therefor, an audit made of books and records of this local from January 1, 1957, to date (September 5, 1958), and by January 1, 1959, Local 183 be restored to self government. Monitor Wells dissented, on the grounds that the recommendations ignored the welfare of the membership in the basic matter of bargain-

ing and management relationship, exceeded the authority of the Monitors, were based in part on alleged procedural irregularities which had not been established, and for other reasons.

While the problem presented by the court's approval of this recommendation is not without difficulty, we think we would not be warranted in declaring the approval invalid. Paragraphs 3 and 7 of the consent decree give jurisdictional basis to require a merger of locals to be made in a manner consistently with the rights of the membership which the defendants obligated themselves to protect under the construction we have given to paragraph 3, read with paragraph 7.

The defendants take the position that the Order of Recommendation was not one with which compliance could be required, and contend that the evidence established ample notice and that the merger was desired by the vast majority of members of both locals. Since, as above stated, we hold the Order of Recommendation in substance to be within the authority of the court to approve under the consent decree, an opportunity to comply with this recommendation should now be afforded with knowledge of its approval in substance by this court. Since the time schedule fixed, however, is long since passed, and indeed had largely passed before the District Court approved the recommendation in December last, counsel for the plaintiffs and defendants, in consultation with the Monitors, should have the opportunity to agree upon a remedy for the situation, if possible, failing which a new order of the District Court may be sought by plaintiffs or Monitors.

Order of Recommendation No. 23. In this order the Monitors recommended that certain members of Local 377 of Youngstown, Ohio, be declared eligible to run for office. The members had been ruled ineligible under interpretations of the 1952 constitution and 1957 amendments thereto because their employers had failed to remit their checked-off dues on or before the

first day of the month. We have already resolved the issues involving check-off and eligibility to hold office in an earlier part of this opinion, and have determined that eligibility for office shall be governed by the 1957 amendment to the constitution. It appears all that remains to be done on this point is for General President Hoffa to notify the members involved and the executive board of their local that they are eligible to run for office under the terms of the 1957 amendment.[22] We agree with the position of the Monitors that the acceptance of the dues from the employer by the local without demanding the payment of one month's dues in advance constituted a waiver of the requirement of such payment.

It will be seen from this opinion that we have not treated as a modification of the consent decree the provisions of the decree of February 9 except those relating to the convention, namely, paragraphs 3, 4, and 5. Except as moot we have on the whole sustained these as valid under the principles of the *Swift* case. We have considered the other provisions of the February 9 decree to be in the nature of instructions or interpretations, rather than modifications. Each of those we have sustained finds its basis in the terms of the consent decree itself.[23]

We are not entering our judgment simultaneously with handing down this opinion. This variation from the usual practice is due to the nature of the case and our desire to expedite the ultimate solution of the litigation by affording an opportunity now, before

[22] Neither the parties nor the Monitors refer in their briefs or arguments in this court to that portion of the recommendation which has to do with the eligibility of Mr. Joseph Blumetti to run for office, so we assume we need not concern ourselves with this provision.

[23] Paragraph 8 of the February 9 decree, however, regarding conflict of interest, grew out of a motion filed in the proceedings in the District Court.

entering judgment, for the parties and the Monitors to agree if possible upon a form of judgment which is consistent with our opinion, or to seek clarification before entry of judgment. See Rule 25 of the Rules of this court. This is not to say that we invite reconsideration of any matter decided, but rather agreement upon a means of carrying out the decisions reached. Accordingly the parties and the Monitors are allowed ten days for the purposes stated. However, the stay entered herein March 31, 1959, which was extended on April 17, 1959, until the further order of this court, is dissolved so as to require the carrying out of the decree of the District Court of February 9, 1959, to the extent we have not disapproved it in this opinion.

APPENDIX A

Consent Decree entered January 31, 1958

[Caption omitted]

This cause came on to be heard this term of court upon plaintiffs' demand for equitable relief as set out in the amended complaint filed herein, which amended complaint prays in the main for the calling of a new convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and for a new election of officers in accordance with the provisions of the International's Constitution. After 22 days of trial during which oral testimony was heard and documentary evidence received, the parties hereto have consented and do hereby consent to the entry of the decree hereinafter set out.

1. It is hereby ordered that the preliminary injunction heretofore entered in this case on the 23rd day of October, 1957 be and the same is hereby dissolved and nullified, and the amended constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America adopted at the 17th convention of the International at Miami, Florida in October, 1957 shall forthwith go into effect, provisionally in accordance with the following paragraphs of this decree, and the officers of the International elected at the convention shall forthwith take office provisionally in accordance with the following paragraphs of this decree.

2. Godfrey Schmidt, nominated by the plaintiffs, L.N.D. Wells, Jr., nominated by the defendants, and Judge Nathan Cayton, nominated jointly by the plaintiffs and defendants, are hereby appointed and shall serve as a Board of Monitors for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America for such period of time and with such duties as are hereinafter set out. Judge

Nathan Cayton, the Monitor jointly nominated by the parties, shall serve as chairman of the Board of Monitors. A majority vote of the Monitors shall be determinative of any action to be taken by the Monitors. In the event of the inability or unwillingness to serve, or other disability on the part of any Monitor, he shall be relieved of his duties and discharged of the obligations hereunder, and a successor Monitor shall be appointed in his place by the Court upon nomination by the party or parties, as the case may be, who nominated the Monitor to whose office the successor Monitor shall be appointed. Furthermore, the Monitors are at all times subject to removal by this Court in the exercise of its discretion for any cause and are subject as officers of the Court to supervision and direction of the Court in performing these duties as hereinafter enumerated.

3. The Board of Monitors in order to insure the enforcement and protection of all rights of the individual members and the subordinate bodies of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as guaranteed by the provisions of the International constitution, in particular,

a. the right to vote periodically for elective officers,

b. the right to honest advertised elections,

c. the right to fair and uniform qualifications to stand for office,

d. the right to freedom to express views at meetings

shall counsel with the General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and make recommendations upon review of appeals taken pursuant to provisions of the International constitution.

4. The Board of Monitors shall draft a model code of local union by-laws not inconsistent with the International constitution, or model provisions for inclusion therein not inconsistent with the International constitution, which model code or provisions the General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall recommend for adoption by the local unions.

5. The General Executive Board in consultation with the Board of Monitors shall review and where needed establish accounting and financial methods, procedures and controls affecting all funds and properties held, received and disbursed by or on behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and its subordinate bodies. All persons having custody or management of such funds or properties shall be required to adhere to the recognized legal and equitable standards and obligations imposed upon fiduciaries in the handling of such funds and properties.

6. No officer of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall have a personal financial interest which conflicts with the full performance of his fiduciary duties as a representative of the International, nor shall he own or have a substantial business interest in any enterprise with which the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America bargains collectively, or in any business enterprise which is in competition with any other business enterprise with which his union bargains collectively, nor shall he own or have a substantial business interest in a business enterprise a substantial part of which consists of buying from, selling to, or otherwise dealing with the business enterprise with which the International Brotherhood of Teams-

ters, Chauffeurs, Warehousemen and Helpers of America bargains collectively.

The provisions of this section do not apply in the case of an investment in the publicly traded securities of widely held corporations which investment does not constitute a substantial enough holding to affect or influence the course of corporate decision.

7. The General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall examine and review the status and condition of affiliated local unions under trusteeship to the end that trusteeships be removed and self government restored with all deliberate speed consistent with the best interests of the membership of such locals. The Board of Monitors shall examine and review the status and condition of locals where trusteeships are maintained and shall counsel with and make recommendations to the General Executive Board looking toward the removal of trusteeships where removal is consistent with the best interest of the membership of the locals.

8. The Board of Monitors appointed herein shall serve as such for at least one year and thereafter until a new convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is held at which convention officers are duly elected and sworn; provided, however, that this Court after one year from the date of this order, in its discretion upon petition of the defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or upon petition of the Board of Monitors may discharge and release said Board of Monitors, or the Court on its own motion may discharge them at any time.

A new convention and election of officers shall be held at any time after the expiration of one year from the date of this order when the General Executive Board by majority vote shall resolve to call such con-

vention and hold such election. The Board of Monitors may recommend to the General Executive Board after the expiration of one year from the date of this order that a new convention and election be held. In all events such new convention and election of officers must be called and held within the time specified by the provisions of the constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as amended.

9. The call for a new convention and elections of officers of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be issued in accordance with the International constitution by the General Executive Board.

a. Delegates to such convention shall be elected in strict and literal compliance with the International constitution.

b. The General Executive Board of the International shall recommend to its affiliated locals that such delegates be elected by secret ballot and, where practicable, under the supervision of such outside agencies as the Honest Ballot Association.

c. The examination and approval of all credentials submitted by delegates to said convention shall be made by the convention Credentials Committee and the Board of Monitors is authorized to counsel with such Credentials Committee and make recommendations to it.

10. The Board of Monitors shall receive compensation for the services performed by them in an amount to be determined by this Court, such payment to be made by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

11. The Board of Monitors shall make a report at least semi-annually to this Court and at the conclusion

of its services and may make recommendations after consultation with the General Executive Board for amendments to the International constitution for proposal at the next International convention.

12. The General Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall make available to the Board of Monitors such clerical and technical help as is reasonably required and necessary.

13. No reprisal of any sort or nature shall be taken against the plaintiffs or any witnesses or affiants in this case or any other person or persons because of their participation in or connection with this case and the General Executive Board shall press charges against anyone violating this section.

14. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall pay the fees of counsel for the plaintiffs and expenses incurred by those in the prosecution of this action, such fees and expenses to be determined by this Court.

Ordered this 31st day of January, 1958.

F. Dickinson Letts
JUDGE

I consent:
Edward Bennett Williams

We consent:

Godfrey P. Schmidt
M. Joseph Blumenfeld
Thomas Dodd

APPENDIX B

February 9, 1959, decree of the court construing and modifying the Consent Decree

[Caption omitted]

Upon consideration of the Findings of Fact and Conclusions of Law made this 9th day of February, 1959, it is hereby

1. ORDERED, that the Defendant provisional officers and the Defendant International shall comply promptly and fully with the Board of Monitors' Orders of Recommendation No. 4, No. 11, No. 12, No. 14, No. 16, No. 17, No. 18, No. 19, No. 20, No. 21 and No. 23, and the Supplemental Orders to No. 16 and No. 19.

2. ORDERED, that the Defendant provisional officers and the Defendant International shall cooperate and assist the Monitors in accomplishing the basic purposes and various provisions of the Consent Decree and, in fulfilling their obligation to assist and cooperate in good faith with the Monitors, the Defendant provisional officers and the Defendant International shall comply promptly and fully with all future Board of Monitors' Orders of Recommendation that are reasonable and relevant to the basic purposes of the Consent Decree.

3. ORDERED, that Section 8 of the Consent Decree is modified and that the first two sentences of the second paragraph are deleted therefrom and the following provision is inserted in their place:

> "The time for the next convention shall be subject to recommendation by the Board of Monitors to the General Executive Board of the International Brotherhood, with the exact time of holding the convention being subject to the final approval of the Court."

4. ORDERED, that the convention call by the Defendant provisional officers and Defendant International on September 16, 1958, is null and void.

5. ORDERED, that the Defendant provisional officers and the Defendant International Union shall advise all local unions and other subordinate bodies that the call for a convention in the City of Chicago, March 15-19, 1959, is null and void. That all local unions and other subordinate bodies shall be notified that said convention shall not be held. Further, that the Defendant provisional officers and the Defendant International shall have a notice read at all February local union meetings and published in the February issue of *The International Teamster* to the effect that the authorization of a convention call has been declared null and void by the Court and that the next convention will not be held as previously announced by the Defendants.

6. ORDERED, that the Defendant provisional officers and the Defendant International shall adopt and apply the interpretations of the provisions of Article X, Section 5(e), of the 1952 International Constitution and the 1957 amendment thereto, as set forth in Conclusions of Law Nos. 16 and 17.

7. ORDERED, that the Defendant provisional officers and the Defendant International Teamsters Union shall give the membership of the International Union, at least three (3) months' notice of the effective date of the 1957 amendment to Article X, Section 5(e) and shall notify the members that the 1957 amendment will become effective on May 1st, 1959, and the Defendants shall have such notice, together with the full text of Article X, Section 5(e), and an explanation thereof, which shall be subject to approval by the Monitors (a) published in the February, March and April, 1959 issues of *The International Teamster*, (b) read at the February, March and April, 1959, local union general

membership and divisional meetings, and (c) posted during the months of February, March and April, 1959, on all bulletin boards where local union notices are customarily posted.

8. ORDERED, that the Defendant provisional officers and the Defendant International shall have a notice read at all Febuary local union meetings and published in the February issue of *The International Teamster* to the effect that the court has found that the Defendant International has presented no evidence to support its motion to disqualify and remove Godfrey P. Schmidt, Esquire, as a Monitor, and this motion was wholly without merit.

/s/ F. Dickinson Letts
F. Dickinson Letts,
Chief Judge, United States
District Court for the
District of Columbia

APPENDIX C

Summary of obligations imposed upon defendants by the consent decree

Para. 3. Rights of Individual Members. We construe this paragraph as requiring the Teamsters to protect the constitutional rights of individual members and locals in regard to elections, qualifications for office and freedom to express views at meetings. This conforms with the restrictive interpretation of this provision suggested by the Monitors in their brief in this court.

Para. 4. By-Laws. The Teamsters shall recommend for adoption by the locals a model code of by-laws, or model provisions for inclusion in the by-laws, to be drafted by the Monitors. (See Para. 4 of Appendix D.)

Para. 5. Fiduciary Standards. The Teamsters shall review and where needed establish accounting and financial methods for all funds and properties held, and shall require all fiduciaries of these funds to adhere to recognized legal and equitable standards and obligations imposed on fiduciaries.

Para. 6. Conflict of Interest. No Teamster officer shall have a conflicting financial interest or put himself in such a business position that will create a conflict of interest.

Para. 7. Trusteed Local Unions. The Teamsters shall examine and review the status of local unions in trusteeship to the end that the trusteed unions be returned to self-government.

Para. 8. Call of New Convention. The Teamsters shall call a new convention and election after one year from the date the consent decree is signed. (The construction of this provision is discussed in the opinion. See also Para. 8 of Appendix D.)

Para. 9. New Convention. The call for the new convention by the Teamsters must be issued in accordance with the constitution, delegates to it shall be elected according to the constitution, and the Teamsters must recommend that such delegates be elected by secret ballot and, where practicable, under the supervision of outside agencies.

Para. 10. Compensation of Monitors to be paid by Teamsters, as determined by court. (See discussion of paragraph 14, *infra.*)

Para. 12. Clerical and Technical Help to Monitors. This is required to be made available by the Teamsters.

Para. 13. Reprisals. These are prohibited.

Para. 14. Counsel Fees and Expenses. Counsel fees of plaintiffs and their expenses incurred in the prosecution of the action, determined by the court, are to be paid by the Teamsters. (See discussion of paragraph 14, *infra.*)

APPENDIX D

Summary of functions of the Monitors under the wording of the consent decree

Para. 3. Rights of Individual Members and Locals. The Monitors shall counsel and make recommendations regarding the rights of individual members and locals under the constitution with respect to elections, qualifications for office and freedom to express views at meetings.

Para. 4. By-Laws. The Monitors shall draft a model code of by-laws or model provisions for inclusion therein. (See Para. 4 of Appendix C.)

Para. 5. Fiduciary Standards. The Monitors shall recommend as to proper financial and accounting procedures and adherence to fiduciary standards of members handling union funds.

Para. 7. Trusteed Local Unions. The Monitors shall examine and review the status and condition of trusteed locals and shall counsel with and make recommendations looking toward removal of that status where consistent with the best interests of locals.

Para. 8. Call of New Convention. The Monitors may recommend when a new convention and election call may be made. (See Para. 8 of Appendix C and discussion in the opinion of the meaning of this provision.)

Para. 9. New Convention. The Monitors are authorized to counsel with and make recommendations as to credentials of delegates at new convention.

Para. 11. Reporting. The Monitors shall make a report at least semi-annually to the court and at the conclusion of their services and may make recommendations for amendment to the constitution for proposal at the next International convention.

WILBUR K. MILLER, *Circuit Judge*, concurring in part and dissenting in part: In the main, I concur in the opinion. I dissent however from the action of the majority, contained in the discusison of *Paragraph 2*, in setting aside the provision that

> "the Defendant provisional officers and the Defendant International shall comply promptly and fully with all future Board of Monitors' Orders of Recommendation that are reasonable and relevant to the basic purposes of the Consent Decree."

I do not agree that this language places the defendants "under obligation to comply with future Monitors' recommendations the terms of which are not known." It merely requires the defendants to comply with future recommendations "that are reasonable and relevant to the basic purposes of the Consent Decree." The defendants may apply to the District Court for relief from any future recommendation they consider unreasonable and irrelevant under the consent decree, and need not comply with it unless and until the District Court has ordered them to do so.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14983

JOHN F. ENGLISH, et al., APPELLANTS,

v.

JOHN CUNNINGHAM, et al., APPELLEES

Supplemental Opinion

Filed July 9, 1959

Before EDGERTON, WILBUR K. MILLER and FAHY, *Circuit Judges.*

FAHY, *Circuit Judge:* In accordance with our opinion of June 10, 1959, the plaintiffs, the defendants, and the Monitors, have agreed upon a form of proposed judgment to carry out our decisions except as herein stated.

1. In their papers first filed after our opinion of June 10, 1959, the plaintiffs and the Monitors requested that we insert a provision at the conclusion of paragraph 1(c) of the proposed judgment that General President Hoffa again request John J. McNamara, President of Local 295, and Secretary-Treasurer of Local 808, to take leave of absence pending decision on his appeal from his conviction of extortion and in the event he does not promptly take said leave of absence, General President Hoffa forthwith exercise his full constitutional power to bring about compliance. Such a provision was not included in the decree of the District Court on appeal and so was not passed upon by this court in our opinion of June 10, 1959. Moreover, subsequent to our opinion Mr. Mc-

Namara's conviction for extortion was reversed by the Appellate Division of the Supreme Court of New York. In view of this the Monitors, in their second papers filed since our opinion was rendered, have withdrawn their request.[1] We make no change in our opinion in respect of this matter.

2. Plaintiffs and a majority of the Monitors also requested in their said first papers that we insert in the judgment a provision which would direct that General President Hoffa notify the nominees involved in a local election, and the Executive Board of Local Union No. 377, that the nominees are eligible to run for office, and that he direct Local No. 377 to proceed promptly to hold the election.[2]

The United States District Court for the Northern District of Ohio has enjoined the holding of this election in a case involving these nominees and Local 377, as well as several of our defendants. On appeal, the United States Court of Appeals for the Sixth Circuit has ordered the case remanded to the District Court for determination of a jurisdictional question depending on diversity of citizenship of parties, *Gaw, et al.* v. *Higham, et al.*, —— F.2d ——. Petition for certiorari to the Supreme Court of the United States to review the decision of the Court of Appeals was

[1] The Monitors accompanied their withdrawal of the request with the following statement:

> "the Board of Monitors respectfully states to the Court that it is the Board's position that under the circumstances of the McNamara case the recommended action would have effectuated the basic purposes of the Consent Order and that there was ample constitutional authority for the General President to have required Mr. McNamara to take a leave of absence or to have suspended him."

[2] Monitor Maher opposed inclusion of this in our judgment for the reason that he finds that defendant Hoffa is under order of the United States District Court for the Northern District of Ohio, Eastern Division, directing him to take no action in this matter until further order of that court.

denied June 29, 1959. The Monitors, in their second papers filed since our decision of June 10, 1959, advise us that in view of the order of the District Court barring an election in Local 377, "it would appear that the compliance date with this Court's Order concerning Local 377 should be postponed until after the injunction is withdrawn, dissolved or vacated." We think it would be preferable, and we so hold, that any conclusion or action by this court respecting Order of Recommendation No. 23, which covers this matter, including what we said about that Order of Recommendation in our opinion of June 10, 1959, be vacated, without prejudice to reconsideration of the matter by the District Court in light of the subsequent progress or disposition of the litigation referred to.

3. With respect to the eligibility of members in general to run for office, a matter dealt with in paragraphs 6 and 7 of the decree of the District Court of February 9, 1959, it is our opinion that members were not given adequate notice of the coming into effect of the 1957 amendment to Article X, Section 5(c) of the constitution of the Teamsters so as to enable those who desired to comply with its provisions to do so. Although the District Court stated that the 1957 amendment became effective by the entering of the consent decree on January 31, 1958, the language of the Court as a whole clearly shows that the amendment was not actually to become effective in operation without proper promulgation and notice to the members. It is our view that no member shall be declared ineligible for office for failure of compliance with this amendment until notice of the effectiveness of the amendment shall have been given to the membership generally in a manner to be agreed by the Monitors and counsel for the parties, or, in the absence of such agreement, as is required by the District Court.

The situation thus existing leaves in effect, governing the eligibility of some members, the provisions of

Article X, Section 5(c), of the 1952 constitution. It is therefore incumbent upon us to interpret that provision. It is our view that, as the District Court held, where an employer under an agreement with a local union checked off dues of an employee member, the employer was the agent of the union and consequently the member should not be considered delinquent if the employer, through no fault of the member, delayed paying the dues to the union on time, that is, on or before the first day of the month.

Our opinion of June 10, 1959, is amplified and modified as herein set forth.

Our judgment this day entered is substantially in the form agreed upon by the parties and the Monitors, with additional provisions by us to conform the judgment with what we have said in this Supplemental Opinion.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1958

No. 14,983

JOHN F. ENGLISH, ET AL., *Appellants*,

v.

JOHN CUNNINGHAM, ET AL., *Appellees*.

Appeal from the United States District Court for the District of Columbia.

Before: Edgerton, Wilbur K. Miller, and Fahy Circuit Judges.

Judgment

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this court that Paragraph 1 of the decree of the District Court of February 9, 1959, is modified as of the date of this judgment as follows:

1.(a) ORDERED that the defendants within thirty days after the entry of this judgment make good faith efforts to obtain modification or dissolution of the September 22, 1958 injunction of the Court of Common Pleas of the City of Philadelphia, consistently with the rights of the parties, or, in the alternative, institute such new proceedings as may be agreed upon by parties and the Monitors and approved by the District Court or as may be directed by the District Court, or institute trusteeship proceedings by (a) filing written charges against Local Union No. 107 to place it under

trusteeship in accordance with the provisions of Article VI, Section 5 of the International Constitution and (b) appointing a panel consisting of one International Vice President, one disinterested member of the International Brotherhood from the area involved and a public member with experience and stature in the labor relations field; and, it is

(b) FURTHER ORDERED that in accordance with the provisions of Article X, Section 11 and Article VI, Section 5 of the International Constitution, General President Hoffa within ten days after the date of this judgment direct the trustee and the officers of trusteed Local Union No. 245 to permit Price Waterhouse & Co. to conduct an audit of the books of the Local for the period from June, 1956 to date; and, it is

(c) FURTHER ORDERED that in accordance with the provisions of Article X, Section 11 of the International Constitution, General President Hoffa within ten days after the date of this judgment direct the officers of Local Union No. 808 to permit Price Waterhouse & Co. to conduct an audit of the books of the Local for the period from July, 1957 to date; and, it is

(d) FURTHER ORDERED that the defendants make a thorough study of the Price Waterhouse report, dated July 22, 1958, and place it on the agenda of the next regular meeting of the General Executive Board so that the Monitors and representatives of Price Waterhouse & Co. may discuss the contents of the report with the General Executive Board at said meeting; and, it is

(e) FURTHER ORDERED that General Secretary-Treasurer English and or. First Vice President Conlin (a) within fifteen days after the date of this judgment in consultation with the Monitors

employ an outside attorney to serve as special counsel in advising the charging party with respect to the preparing and processing of charges and the conduct of the hearing on charges against Seventh Vice President Brennan, (b) within five days after the employment of special outside counsel arrange for a thorough investigation of the charges against Vice President Brennan, (c) within ten days after the conclusion of the investigation file such charges as are warranted by the evidence with the General Executive Board against Vice President Brennan in accordance with the provisions of Article XVIII, Section 3(d) of the International Constitution, (d) within five days after the date of the filing of charges notify the Executive Board of Local Union 337, Detroit, Michigan, of the charges made against Vice President Brennan and the action being taken by the International Union and recommend that consideration be given to instituting proceedings to remove Mr. Brennan from his office as president of the Local, and (e) within ten days after the employment of special outside counsel exercise their full constitutional authority to have those in charge of the Michigan Conference Welfare Fund consent to a Price Waterhouse & Co. audit of the records of the Fund for the period during which payments were made to Mr. Davidson and, if consent is not given, the defendants shall exercise their full constitutional authority to secure compliance; further ordered that General President Hoffa forthwith disqualify himself from any participation, direct or indirect, in the filing and investigation of the charges against Vice President Brennan and in the conduct of the hearings concerning them; and that the defendants arrange to have a hearing conducted not later than the next regular General Executive Board meeting after

the filing of charges in accordance with the procedures set forth on pages 50-51 of the *Initial Report of Board of Monitors*, namely:

(1) Copies of all charges should be submitted in writing to the person charged at least ten days prior to any trial or hearing.

(2) When a person charged requests specification of general charges, such specification should be promptly supplied. Details of the conduct or activity should be described, giving dates and places where possible.

(3) The trial board should not include among its members any person who is in the role of an accuser. (See Constitution, Article XVIII, Sec. 1(a).)

(4) Either verbatim minutes of the hearing or accurate summaries of the evidence should be kept. Upon request, these should be made available to the accused.

(5) The accused should be given a reasonable opportunity, in connection with an appeal, to offer corrections of the stenographic minutes mentioned in Item (4) above if he deems correction necessary; and his offer of correction should constitute part of the minutes of the proceeding.

(6) The accused should have the right to confront and cross-examine witnesses giving testimony against him.

(7) The trial board should give to the accused full opportunity to make his defense and to produce testimonial or documentary evidence for that purpose.

(8) The decision of trial boards should recite the facts which it finds to be true and should also set forth the basis for the decision reached.

(9) All documents in the proceeding, as well as summaries of evidence or stenographic minutes, shall be preserved and kept available for use in further proceedings in the Union.

(10) It should always be understood that every accusation must be supported by proof; and, it is

(f) FURTHER ORDERED that the defendants continue the suspension of Mr. Feldman; that within thirty days after the date of this judgment the defendants conclude the investigation of the allegations made at the hearing of the Senate Select Committee on August 8, 1958, regarding Mr. Feldman's activities in the organization of an independant union of the employees of the Dewey Restaurant Chain in Philadelphia; that within twenty days after the conclusion of the investigation the defendants submit to the Board of Monitors a report on said investigation; that the defendants, within thirty days after the date of providing the Monitors with a copy of the report, conclude the hearing on the charges filed by the General President against Samuel Feldman for expulsion from membership under the provisions of Article XVIII, Section 10 and Section 13(c) of the International Constitution; and, it is

(g) FURTHER ORDERED that the Board of Monitors, in consultation with counsel for the defendants prepare a summary of provious Recommendations to which consent has been given, or which have been approved by the District Court or the Court of Appeals, together with a statement of the course of the Monitorship which, when approved by the District Court, shall be published in *The International Teamster*; and, it is

(h) FURTHER ORDERED that the dedendants (a) forthwith suspend or continue the suspension of

Glenn W. Smith and H. L. Boling from office; (b) within twenty days after the date of this judgment conduct a thorough investigation into the acquisition of the sum of $13,500 by Local 515 from the Southern Conference of Teamsters during June, 1951, and, if the investigation produces evidence of wrongdoing on the part of any officer or officers of the Southern Conference, file appropriate charges; (c) within five days after the date of this judgment instruct Price Waterhouse & Co. to audit the books and records of Local 515 for the period during which the checks were issued in payment of the $20,000 alleged "fix"; and (d) within twenty days after the audit has been completed conclude the hearing on charges filed for expulsion from membership against Glenn W. Smith and H. L. Boling as officers and members of Teamster Local 515; and, it is

(i) FURTHER ORDERED that the defendants within a reasonable time discuss with the Monitors means of securing the adoption by all Local Unions of temporary rules governing the conduct of nomination meetings and elections of Local Union officers and the adoption of a Model Code of Local Union By-laws in accordance with the obligations of the defendants under parapraphs 3 and 4 of the Consent Decree; and, it is

2. FURTHER ORDERED AND ADJUDGED by this court that the substance of the District Court's decree of February 9, 1959, with respect to the merger of Local Union No. 183 with Local Union No. 959 is approved; and further ordered that since the time schedule fixed for compliance is long since passed, counsel for plaintiffs and defendants, in consultation with the Monitors, shall attempt to agree upon a remedy for the situation, if possible; failing which, a new order of the District Court may be sought by the plaintiffs or the Monitors; and,

3. It Is Further Ordered and Adjudged by this court that paragraph 2 of the decree of February 9, 1959, is modified to read as follows:

> Ordered, that the Defendant provisional officers and the Defendant International shall cooperate and assist the Monitors in accomplishing the basic purposes and various provisions of the Consent Decree;

and

4. It Is Further Ordered and Adjudged by this court that paragraph 3 of the District Court's decree of February 9, 1959, is modified by providing that Section 8 of the Consent Decree is modified by deleting the first two sentences of the second paragraph of Section 8 and by inserting the following provisions in their place:

> A new convention and election of officers shall be held at any time after the expiration of one year from the date of this order when the District Court shall determine that such convention and election be called and held. The plaintiffs, the defendants and the Monitors may make recommendations to the District Court as to the time when the next convention and election should be held;

and,

5. It Is Furthered Ordered and Adjudged by this court that paragraph 4 of the District Court's decree of February 9, 1959, is vacated and set aside as moot; and,

6. It Is Further Ordered and Adjudged by this court that paragraph 5 of the District Court's decree of February 9, 1959, is vacated and set aside as moot; and,

7. It Is Further Ordered and Adjudged by this court that the conclusion of the District Court that

Mr. Godfrey P. Schmidt, as a member of the Board of Monitors, is not involved in a conflict of interest is overruled and the District Court is instructed to determine, in the exercise of a sound discretion, on the remand of the cause hereinafter ordered and in the light of our opinion of June 10, 1959, whether the conflict of interest which was shown disqualifies Mr. Schmidt as a Monitor; and,

8. It Is Further Ordered and Adjudged by this court that paragraph 8 of the District Court's decree of February 9, 1959, is modified to read as follows:

> The defendants shall cause to be published in *The International Teamster* the following statement:
>
> "Referring to the various charges against Mr. Godfrey P. Schmidt appearing at page 8 of the October 1958 issue of The International Teamster, the District Court found all of them unproved. The Court of Appeals said: 'We accept these findings other than the one as to conflict of interest. The undisputed facts are that during the time Mr. Schmidt has been a Monitor he has represented Producers Distributors Associates, an employer, in arbitration proceedings in New York involving Teamster Local 816, including conferences with the Secretary-Treasurer of the local in New York; that a member of the office of Mr. Schmidt appeared before the National Labor Relations Board on behalf of Howard Johnson Restaurants in connection with decertification proceedings involving the same local; that he represented the Schraffts Restaurant chain in New York and in connection therewith assisted to some degree in passing upon a contract between Teamsters' Local 816 and a trucker company who is the commissary carrier for Schraffts, and had conferences on the contract with the Secretary-Treasurer of the local; that his firm represented the Coin Service Company of

New Jersey in negotiations of the company looking toward a contract with Local 575, a Teamster local in New York, and also represented the Independent Sanitation Owners Group of New York in contractual negotiations with Teamsters' Local 813. There is no suggestion by us that in any of these matters, or otherwise, Mr. Schmidt has not conducted himself lawfully, in good conscience, and openly; but we believe conflict of interest exists nonetheless. His private employment in negotiating with Teamster locals on behalf of employers tends potentially—and that is all that is necessary to create conflict of interest—to condition the exercise of his public responsibility as an officer of the court. Obvious, too, is the potential pressure upon Teamster locals in negotiating terms of employment with one who while representing the bargaining employer is a Monitor who possesses great influence in the affairs of the Teamsters.

Since, however, Mr. Schmidt is an officer of the District Court, we simply state our disagreement with the finding that no conflict of interest was shown. Whether the conflict of interest which was shown disqualifies him as a Monitor is a matter to be determined initially by the appointing court in the exercise of a sound discretion on our remand of the case.'"

9. It Is Further Ordered and Adjudged by this court that the provisions of the decree of February 9, 1959, that the defendants shall comply with Order of Recommendation No. 23, and the conclusion of our opinion of June 10, 1959, respecting that matter, are vacated, without prejudice to further consideration of the subject matter in the District Court in light of the progress or disposition of the litigation referred to as *Gaw, et al.* v. *Higham, et al.*, pending in the United States District Court for the Northern District of Ohio.

10. It Is Further Ordered and Adjudged by this court that paragraph 6 of the decree of February 9, 1959, to the extent that it orders defendants to apply the interpretation of Article X, Section 5(c) of the 1952 constitution as set forth in Conclusion of Law No. 16, is hereby affirmed, and that paragraph 7 of the said decree of February 9, 1959, and the conclusions of this court set forth in our opinion of June 10, 1959, respecting the 1957 amendment to Article X, Section 5(c) of the constitution, be modified comformably with the Supplemental Opinion of this court rendered this day.

11. It Is Further Ordered by this court that in all other respects the decree of the District Court entered February 9, 1959, is affirmed and that this cause is remanded to the District Court for further proceedings in conformity with the opinions and judgment of this court.

Per Curiam

Dated: July 9, 1959

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PETITIONERS' REPLY BRIEF

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AUG 20 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 194

GENE SAN SOUCIE, Individually and as President of the INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA and as PRESIDENT OF INDIANA LOCAL NO. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, THE INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and LOCAL NO. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioners,

against

The Honorable F. DICKINSON LETTS, Judge of the United States District Court for the District of Columbia,

Respondent.

PETITIONERS' REPLY BRIEF.

WILLIAM GOLFEN,
Counsel for Petitioners,
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New York 38, N. Y.

346 Pinlick Press, Inc., 22 Thames St., New York 6, N. Y., U.S.A.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 194

GENE SAN SOUCIE, Individually and as President of the INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA and as PRESIDENT OF INDIANA LOCAL NO. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, THE INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMAN AND HELPERS OF AMERICA, and LOCAL NO. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioners,

against

The Honorable F. DICKINSON LETTS, Judge of the United States District Court for the District of Columbia,

Respondent.

PETITIONERS' REPLY BRIEF.

The respondent's brief makes no attempt to justify the unprecedented denial by judicial decree of the civil right of 1,600,000 union members to the choice of their officers at a democratically conducted election. No attempt is made to deny that the respondent clearly exceeded his jurisdiction in substituting for a provision of a consent decree authorizing the General Executive Board of the union to call a

new, free election, a provision that such election must await the recommendation of the Board of Monitors.[1]

Oblivious to substance, the respondent's objections to prohibition are that (1) relief may have been sought through intervention (Respondent's brief, p. 5) and that, anyway, (2) the petitioners should be content to rely upon "appropriate appeals" by the defendants in *Cunningham* v. *English*, Civil Action No. 2364-1957, (Respondent's brief, p. 6).

POINT I.

An application by petitioners to intervene would have constituted an idle gesture.

While Petitioner Indiana Conference of Teamsters had authorized legal action as early as January 15, 1959 when it was already apparent that the respondent intended to bar a free election (Pet. App. H, par. 2, p. 97), it was not until April 5, 1959 that Petitioner Local No. 135 was authorized by vote of the membership to institute the present proceeding for prohibition (Pet., App. H, par. 3, p. 98). The petition for leave to file the writ of prohibition was served five days later at which time an appeal to the Court of Appeals by the defendants in *English* v. *Cunningham* (C. A. D. C.), No. 14983, was already pending from all phases of the modification order,[2] with particular stress upon its grant to the Monitors of "housecleaning" powers, but with less concern over the denial of a free, union election.

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[1] The modification by the Court of Appeals quoted at page 4 of respondent's brief provided that such election must await the determination of the respondent rather than the Board of Monitors, but did not reinstate the right of the Teamsters to call a new election.

[2] Concerning the difficulty of obtaining leave to intervene after an appeal has been taken, Professor Moore observes, "The trial court may not allow intervention after an appeal has been taken, except in aid of the appeal. In an unusual case the appellate court may itself allow intervention." Moore's *Federal Practice*, Second Edition, Vol. 4, p. 100.

In any event, it would have been futile for petitioners to have "sought to intervene" (Respondent's brief, p. 5) in the *Cunningham* v. *English* case. This had theretofore been dramatically demonstrated in *Cunningham* v. *Letts* (C. A. D. C.), No. 14889, cited at footnote 1 of page 4 of respondent's brief, a petition for mandamus or prohibition to enjoin entering of the modification order. Despite the provision of Rule 24 (a) (2) of the Federal Rules of Civil Procedure for intervention as of right "when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action . . .", the respondent, by direct order and conduct prohibited any new or additional counsel from participating in any manner in *Cunningham* v. *English*. (Affidavit of Joseph M. Williamson, Esq. and Marshall E. Miller, Esq. on file in the *Cunningham* v. *Letts* case, *supra*.)[1] In the circumstances, even if still available despite the pending appeal, it would have been ludicrous to have attempted intervention in *Cunningham* v. *English*.

Intending that their petition be argued simultaneously with the appeal in *English* v. *Cunningham*, the instant petitioners moved in the Court of Appeals to set their petition for prohibition for hearing on April 15, 1959, the advanced date for argument of the appeal in the *English* case. The motion was denied on April 14, 1959 and while the petition for leave to file for prohibition was pending, the Court of Appeals denied an application by the petitioners in *Cunningham* v. *Letts* for leave to intervene in the *English* v. *Cunningham* appeal by order in the latter case made on April 15, 1959,[1] a fate no different than could reasonably have been anticipated by the present petitioners if they had sought similar leave. In short, no appellate

[1] However, the Court did consider the brief of the petitioners in *Cunningham* v. *Letts* as though those petitioners were *amici curiae*.

process other than prohibition has been available to petitioners who, though strangers to *Cunningham* v. *English*, are proper applicants for prohibition, because they are affected by that proceeding.

73 C. J. S. Prohibition, §23b, page 100.

The petitioners in *Ex parte Fahey*, 332 U. S. 258, relied upon heavily by respondent, unlike the present petitioners, had an undisputed right of appeal. Moreover, the *Fahey* case involved numerous serious questions of law and fact, whereas in the present petition there is a single, clean cut issue as to whether prohibition, the only practical remedy, is available where the lower Court, in preventing the holding of a democratic union election (Pet. App. G, par. 4, p. 94), has clearly exceeded its jurisdiction.[1]

Ex parte Peru, 318 U. S. 578;
Ex parte State of New York, 256 U. S. 490.

The present case, like *Ex parte Peru, supra*, also cited by respondent, "is one of such public importance and exceptional character as to call for the exercise" of discretion to issue a writ of prohibition, rather than to relegate petitioners to other, doubtful appellate processes.

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[1] The paragraph beginning at the bottom of page 5 of Respondent's brief refers to claimed "serious error" on his part correctable on appeal, rather than to his decree in excess of his jurisdiction correctable by the instant petitioners exclusively by prohibition.

POINT II.

Petitioners should not be required to rely upon the litigants in *Cunningham* v. *English*.

The respondent's suggestion at page 6 of his brief that the petitioners are protected by the conduct of the litigants in the class action of *Cunningham* v. *English*, *supra*, is without merit. Of course no protection of the petitioners' right to vote for their officers at a democratic election can be expected from the plaintiffs in *Cunningham* v. *English*, represented by Godfrey P. Schmidt as their attorney, who in his other capacity as a monitor successfully spearheaded opposition to a new, free election with its concomitant dissolution of the Board of Monitors on which, after a determination by the Court of Appeals of conflicting interest (Pet., footnote 1, p. 4), he has been supplanted at his request by his partner, Lawrence T. Smith, by designation of the respondent (*The New York Times*, July 14, 1959).

As for the suggestion that the petitioners may rely upon the defendants in *Cunningham* v. *English* on the theory that they "had raised identical issues" (Respondent's brief, pp. 5, 6), the fact is that careful examination of the appellants' papers in *Cunningham* v. *English* reveals only the most cursory interest in the indefinite postponement of the right of election. Petitioners should not be expected to overlook that because of the provision of the modification order depriving the Teamsters of the right to a democratic election of their representatives (Pet. App. G, par. 3, p. 94), the present officers, as well as the Monitors (Pet. App. E, par. 8, p. 79) continue in office indefinitely and, probably, for the full four-year term provided by the constitution as amended, so that though

they vigorously oppose amplification of the Monitors' powers, they understandably object less vigorously to their mutual continuance in office as long as the Monitors' authority under the consent order merely to recommend is not expanded.[1]

POINT III.

Conclusion.

With patent deprivation of due process, the respondents' modification order has placed 1,600,000 Teamsters in the humiliating position of representation for an indefinite period by officials holding office under the stigma, however unproven, of an allegedly "rigged" election (Pet., App. H, par. 9, p. 99). This unparalleled denial of the civil right of free choice of representatives presents a question of such importance as to warrant relief by writ of prohibition, the only feasible means of attaining justice.

The Court of Appeals' sanction of the respondent's undisputed departure from the usual course of judicial proceedings calls "for an exercise of this Court's power of supervision". Rule 19, Supreme Court Rules.

Respectfully submitted,

WILLIAM GOFFEN,
Counsel for Petitioners.

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[1] As a reading of the entire paragraph 3 of the consent order reveals (Pet. App. E, pp. 77, 78), the quoted language at the bottom of page 2 of the respondent's brief is misleading insofar as it appears to represent that the Monitors had more than recommendatory authority.

PETITION FOR REHEARING

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 194

GENE SAX SOUCIE, Individually and as President of the INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA and as PRESIDENT OF INDIANA LOCAL NO. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, THE INDIANA CONFERENCE OF TEAMSTERS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and LOCAL No. 135 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioners,

against

The Honorable F. DICKINSON LETTS, Judge of the United States District Court for the District of Columbia,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

PETITION FOR REHEARING.

WILLIAM GOFFEN,
Counsel for Petitioners,
150 Broadway,
New York 38, N. Y.

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IN THE

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Petitioners,

against

THE HONORABLE F. DICKINSON LETTS, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

PETITION FOR REHEARING.

There can be no doubt of the extraordinary national and legal importance of a petition by 30,000 union members to prohibit judicial deprivation of their right

and that of a membership of 1,600,000 to an honest, free and democratic election of their international officers.[1] The denial for an indefinite period of this right, under the guise of modification of a consent order,[2] is a patent deprivation "of life, liberty or property without due process of law." The very uniqueness of the respondent's decree enjoining such an election constitutes it an anomaly in the law.[3]

Consequently, and in view of this Court's customary practice, however necessitated by the pressure of work, of giving no reason in individual cases for its

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[1] Indeed, this Court has regarded the mere fact of involvement of 530 people as in itself indicative of sufficient importance to warrant its review. See *Ludecke* v. *Watkins*, 335 U. S. 160, 162, n.2 (1948), where this Court stated: "We are advised that there are 530 alien enemies, ordered to depart from the United States, whose disposition awaits the outcome of this case".

[2] The so-called modification consisted of the unilateral substitution for a provision authorizing a call by the General Executive Board of the union for an election in one year (see page 4, f. n. 1, *infra*) of a new provision depriving 1,600,000 members of the right to an election until such time as the monitors recommend. The new provision (par. 3) reads in part as follows:

> "The time for the next convention shall be subject to recommendation by the Board of Monitors to the General Executive Board of the International Brotherhood, with the exact time of holding the convention being subject to the final approval of the Court."

further modification by the Court of Appeals in *English, et al.* v. *Cunningham, et al.* (C. A. D. C.), No. 14983, did not reinstate the right to an election at the instance of the Teamsters' General Executive Board. It sustained the withholding of the right, but at the pleasure of the respondent rather than the monitors. See paragraph 4 of the Judgment of the Court of Appeals, entered on July 9, 1959, providing in part as follows:

> "A new convention and election of officers shall be held at any time after the expiration of one year from the date of this order when the District Court shall determine that such convention and election be called and held . . ."

[3] See citations of authority at pages 7 and 8 of Petition for Writ of Certiorari showing the heretofore unanimous judicial trend in favor of democratic elections.

denial of certiorari,[1] the 30,000 union members comprising the petitioner Indiana Conference of Teamsters, cannot be convinced of the justice of the denial of review and therefore seek rehearing.

The wide coverage of this Court's determination in the nation's press suggested two reasons why certiorari was denied; namely, (1) the impossibility of a democratic election without a prior, undefined "housecleaning" of the union and (2) the anticipation of a petition for certiorari by the provisional officers.[2]

POINT I.

Intervening circumstances of controlling effect demonstrate the capriciousness of the contention that an honest election cannot be held for an indefinite period.

A so-called "housecleaning" is not a condition to the conduct of an honest, free and democratic election of the union's officers. Though widely publicized by the country's newspapers[3] and magazines, this excuse for opposing an election appears on reflection to be a hoax successfully perpetrated by the monitors upon the respondent, a gentleman of quite advanced years. Pur-

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[1] See *What the Supreme Court Did Not Do During the 1952 Term*, 102 University of Pennsylvania Law Review 427 (1954).

[2] Such petition has since been filed in *English, et al.* v. *Cunningham, et al.*, October Term, 1959, No. 415.

[3] The New York Mirror, October 13, 1959, reported:

"In the appeal, the Teamsters union contended the consent decree provided for a convention any time after one year. The monitors said obstructive tactics by Hoffa prevented them from preparing for a clean convention and election. Letts held conditions justified delaying the convention and he was upheld by the U. S. Court of Appeals here."

suant to the consent decree[1] an unrigged election would have been held after the expiration of one year,[2] and no attempt at rationalization can warrant taking, so far, almost two years to prepare for an election that may be arranged within six months. Though this would appear to be self-evident, petitioners' attorney on October 16, 1959 inquired of the Election Institute, specialists in the conduct of honest labor elections, as to whether it would be possible to conduct an impartial and honest election of international officers of the Teamsters, and if so, the length of time necessary. The

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[1] Paragraphs 8 and 9 of the consent decree, insofar as pertinent, provide:

"The Board of Monitors appointed herein shall serve as such for at least one year and thereafter until a new convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is held at which convention officers are duly elected and sworn. . . .

"A new convention and election of officers shall be held at any time after the expiration of one year from the date of this order when the General Executive Board by majority vote shall resolve to call such convention and hold such election. . . .

"9. The call for a new convention and election of officers of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be issued in accordance with the International constitution by the General Executive Board.

a. Delegates to such convention shall be elected in strict and literal compliance with the International constitution.

b. The General Executive Board of the International shall recommend to its affiliated locals that such delegates be elected by secret ballot and, where practicable, under the supervision of such outside agencies as the Honest Ballot Association.

c. The examination and approval of all credentials submitted by delegates to said convention shall be made by the convention Credentials Committee and the Board of Monitors is authorized to counsel with such Credentials Committee and make recommendations to it."

[2] Paragraph 4 of the respondent's modification order nullified a convention call on September 16, 1958, for a new election of officers to be held in March, 1959.

Election Institute answered unequivocally that such an impartial and honest election could be held under its rules and that the preparation for it would take a minimum of three months. A copy of its letter is annexed hereto as Appendix A.

On October 23, 1959, petitioners' attorney asked George Abrams, Esq., an executive of the Honest Ballot Association, whether that organization could assure an honest and impartial election. Mr. Abrams informed him that this could unquestionably be arranged by the Honest Ballot Association and that it would require three to six months to make the necessary arrangements. The impossibility of obtaining written confirmation of this simple truth in writing is apparent from the affidavit of William Goffen annexed hereto as Appendix B.

In addition to the ground for rehearing that the Election Institute and the Honest Ballot Association thus confirm the feasibility of an honest election "under the supervision of such outside agencies as the Honest Ballot Association" (Consent Decree, Par. 9b, f. n. 1, p. 4, *supra*), other intervening circumstances of substantial effect present grounds for granting the petition in that the Teamsters have distinguished themselves by apparently being the first of the unions to attempt to comply with the provisions of Title III, dealing with trusteeships, and of Title V, relating to bonding of both international and local union officials and to the holding of office by persons convicted of certain crimes, of the Labor Management Reporting and Disclosure Act of 1959. In compliance with the prohibition against the holding of office by persons convicted of certain crimes, Title V, §504a, the Teamsters have accepted the resig-

nations of four of the 6,000 officers in the 860 locals throughout the United States, representing the grand total of those convicted of such crimes. The fact that not a single person now holds office at the international or local level of the Teamsters in violation of Title V would seem to be additional refutation of the respondent's and the monitors' widely publicized contention that a "housecleaning" is essential for a democratic election.

POINT II.

The filing of petitions for certiorari in cases involving the same issue as the instant petition, as well as the offer of the provisional officers who, like the monitors, are in a conflict of interest position with respect to a new election, to withhold the calling of a new convention, constitute additional intervening circumstances of controlling effect.

The filing of a petition by the Teamsters for certiorari in *English, et al.* v. *Cunningham, et al.*, October Term, 1959, No. 415, instead of being a reason for denial of the present petition, as suggested by newspaper reports,[1] emphasizes the public importance of the problems presented.[2] Accordingly, the fact that the same or a related issue has subsequently come before this Court

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[1] For example, the Wall Street Journal, October 13, 1959, wrote:

"The Supreme Court apparently rejected the suit to allow a new Teamster election on procedural grounds because the International Union itself has also requested review in a separate case. The high court is expected to act on this appeal soon."

[2] Also demonstrative of the extraordinary national importance of the problems is the pendency of a petition for certiorari in *Cunningham* v. *English, et al.*, October Term, 1959, No. 383, where the entry of the original consent decree is attacked.

in another case still pending after grant of certiorari has heretofore been recognized as justification for granting rehearing in the earlier case. *Pickett* v. *Union Terminal Co.*, 313 U. S. 591; 314 U. S. 704; 315 U. S. 386, 394 (1942). Similarly, certiorari if granted in *English, et al.* v. *Cunningham, et al., supra*, would seem to constitute an intervening circumstance of controlling effect, requiring grant of the present petition for rehearing, even *sua sponte*.

Flora v. *U. S.*, October Term, 1957, No. 492, pending before this Court;
Bowden v. *Fort Smith*, 315 U. S. 793 (1942);
Query v. *U. S.*, 316 U. S. 653 (1942);
Helvering v. *Sprouse*, 316 U. S. 656 (1942);
U. S. v. *Watkins*, 337 U. S. 955 (1949).

In *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*; 318 U. S. 285 (1943), this Court accepted jurisdiction over a petition for prohibition filed in relation to a pending suit. Prohibition was recognized as an independent proceeding. The respondent's contention that certiorari should be denied in the instant petition for prohibition because the petitioners should be satisfied to rely upon the legal efforts of the International and of the monitors was reviewed by petitioners' Point II of their reply brief. Both the monitors and the provisional officers continue in office as long as there is no new election. Therefore, the officers do not oppose as vigorously the continuation in office of the monitors so much as the enlargement of their powers. This has been demonstrated in connection with an application for a stay by the respondents provisional officers in *English, et al.* v. *Cunningham, et al., supra*,

which includes an offer to postpone any new convention with the concomitant dismissal of the monitors,[1] until a final determination is reached. This expressed willingness of the provisional officers further to postpone a new election, an intervening circumstance of controlling effect, is stated as follows:

> "So far as the new convention is concerned, petitioners, though unable to understand respondents' claim that they would be injured by such a convention, will undertake, as they did also in seeking a stay below, that they will not call a convention pending final determination of the cause" (*English, et al.* v. *Cunningham, et al.*, *supra*, Application for Stay, p. 9).

In short, insofar as protection of the right of the Teamsters to a new and free election is concerned, both the monitors and the provisional officers, holding office only until the new election is held, find themselves in a conflict of interest position.

Conclusion.

The denial of the most important civil right of the union man to a free and honest election of his officers is consistent with the tendency of recent years toward

---

[1] Paragraphs 8 of the Consent Decree (page 4, f. n. 1, *supra*) is specific that the monitors, as well as the present officers cease to serve upon a new election, as follows:

> "The Board of Monitors appointed herein shall serve as such for at least one year and thereafter until a new convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is held at which convention officers are duly elected and sworn."

The financial stake of the Monitors in avoidance of an election and in perpetuation of their political plum is suggested by their bill for services and expenses from February, 1958 to November 4, 1959 in the sum of $324,738.99.

erosion of labor's rights. The Taft-Hartley Act, the McClellan Committee investigations, the Landrum-Griffin Act, the steel companies' apparent attempt to weaken the steel workers' union, Judge Letts' order denying the right of 1,600,000 members to vote for their officers under the guise of modification of a consent decree, are part of the current trend reflected daily by the press and popular magazines toward diminution of the power of organized labor.

It would seem that the last resort for the protection of the right to a better life for the working people is our Supreme Court unswayed by partisan propaganda rendering decisions based upon law rather than upon political expediency so obviously the motivation for the unprecedented determination of the venerable respondent.

In support of their petition under Rule 58(2) of the Supreme Court Rules for rehearing of a denial of certiorari to review the refusal of the Court of Appeals for the District of Columbia Circuit to accept for filing a petition for a writ of prohibition by 30,000 union members to rid themselves of the humiliation of a monitorship and representation by provisional officers holding office under the stigma, however unwarranted, of an allegedly rigged election, the petitioners have directed attention to intervening circumstances of controlling effect. Such circumstances include (1) the assurances of the Election Institute and of the Honest Ballot Association that an unrigged election may be held within six months, (2) the Teamsters' excellent record of attempted compliance with the Labor Management Reporting and Disclosure Act of 1959 (Point I, *supra*), (3) the pendency of the petitions for certiorari in

English, et al. v. *Cunningham, et al., supra,* and in *Cunningham* v. *English, et al., supra,* and (4) the offer of the petitioners in *English, et al.* v. *Cunningham, et al.,* to postpone a new election until a final determination, an evidence of the conflict of interest position of the provisional officers (as well as the monitors) in so far as representing the present petitioners' desire for an immediate new convention is concerned (Point II, *supra*).

It is therefore respectfully submitted that the petition for rehearing should be granted, the denial of certiorari vacated, and certiorari granted.

Respectfully submitted,

WILLIAM GOFFEN,
Counsel for Petitioners.

Certificate of Counsel.

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58, paragraph 2, of the Rules of this Court.

WILLIAM GOFFEN,
Counsel for Petitioners.

APPENDIX

Appendix A.

Letter by Election Institute.

THE ELECTION INSTITUTE
745 FIFTH AVENUE NEW YORK 22, N. Y. PLaza 2-1587

October 19, 1959

WILLIAM GOFFEN, Esquire
150 Broadway
New York 38, N. Y.

Dear Mr. Goffen:

This will acknowledge receipt of your letter dated October 16th, 1959. In response to the two questions raised in that letter pleased be advised as follows:

1. Any election conducted by The Election Institute in accordance with its Rules will result in an impartial and honest election. The Institute will never accept any election which in its opinion would be conducted otherwise.

2. If The Election Institute were requested by competent authority to administer in accordance with its Rules an election as outlined in your letter it is confident that by complete adherence to its Rules it would result in a completely fair and honest election.

3. The time necessary to accomplish such an election would of necessity depend upon many factors not covered by your letter, however, we are positive that it would take a minimum of three months to establish

the necessary procedures for the proper accomplishment of such an election.

If you have any further questions with regard to The Institute or its Rules please feel free to contact us. I am enclosing a copy of the Rules for your use.

Sincerely yours,

HERBERT SCHMERTZ
Herbert Schmertz
Executive Vice-President

Appendix B.

Affidavit of William Goffen.

[SAME TITLE.]

STATE OF NEW YORK }
COUNTY OF NEW YORK }

WILLIAM GOFFEN, being duly sworn, deposes and says:

I am the attorney for the petitioners herein.

On October 23, 1959, I asked George Abrams, Esquire, an important official of the Honest Ballot Association, whether under its supervision it would be possible to have a democratic election of officers of the International Brotherhood of Teamsters. He stated that of course such an election could be had and that arrangements would require three to six months. I then asked him whether he would confirm his statement in writing for the information of the Court. He suggested that I reduce my inquiries to writing. I therefore wrote the following letter:

"WILLIAM GOFFEEN
COUNSELOR AT LAW
REctor 2-5478

150 BROADWAY, NEW YORK 38, N. Y.

Oct. 23, 1959

HONEST BALLOT ASSOCIATION
27 William Street
New York, N. Y.

Attention Mr. George Abrams

Gentlemen:

I am the attorney for the Indiana Conference of Teamsters and Local No. 135 of the International

Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, whom I represent in a petition to prohibit the Honorable F. Dickinson Letts, Judge of the United States District Court for the District of Columbia, from interfering with the conduct of an election of officers of the International Brotherhood of Teamsters.

A point at issue is whether a new election would be fair in every way if conducted as provided by a certain consent decree in the action of *Cunningham* v. *English* 'under the supervision of such outside agencies as the Honest Ballot Association'.

Based upon your experience in such matters, will you please state whether under your supervision an honest and free election of the international officers of the International Brotherhood of Teamsters could be held? If such an election is feasible, please state the approximate time it would take to make preparations for the holding of the election.

I should deeply appreciate your early response.

Very truly yours,

WILLIAM GOFFEN"

WG:js

As I had not received an answer by October 29, 1959, I telephoned Mr. Abrams. He reiterated that under the supervision of the Honest Ballot Association an election of the officers of the Teamsters would be abso-

lutely honest, but stated that his attorney advised him not to write any letter of confirmation.

WILLIAM GOFFEN.

Sworn to before me this
4th day of November, 1959.

HAROLD M. KAUFMAN
NOTARY PUBLIC, State of New York
No. 30-2048380
Qualified in Nassau County
Term Expires March 30, 1961